URSULINE COLLEGE CLEVELAND OHIO

The American Political Science Review

BOARD OF EDITORS

Everett S. Brown, University of Michigan
Harwood L. Childs, Princeton University
Robert E. Cushman, Cornell University
David Fellman, University of Nebraska
Russell H. Fitzgibbon, Univ. of California (L.A.)
Robert K. Gooch, University of Virginia
Fritz Morstein Marx, U. S. Bureau of the Budget
C. Herman Pritchett, University of Chicago
Charles C. Rohlfing, University of Pennsylvania
Frederick L. Schuman, Williams College
Frederic A. Ogg, Managing Editor, University of Wisconsin

VOL. XLI APRIL, 1947 NO. 2

CONTENTS

The Criminality of Aggressive War	Leo Gross	205
Religious Liberty v. The Police Power: Jehovah's Witnesses	Hollis W. Barber	226
Constitutional Law in 1945–46	Robert E. Cushman	248
American Government and Politics		
The Federal Administrative Procedure Act	Foster H. Sherwood	271
Strengthening State Legislatures	Lynton K. Caldwell	281
Legislative Reference Service for the Congress of the United States	W. Brooke Graves	289
Foreign Government and Politics		
Post-War Municipal Elections in Great Britain	William A. Robson	294
Democracy and Socialism in New Zealand	Leslie Lipson	306
Instruction and Research		
Toward a More Integrated Political Science Curriculum	Landon G. Rockwell	314
News and Notes, Personal and Miscellaneous	Managing Editor	321
Book Reviews and Notices		331
Recent Publications of Political Interest		
Books and Periodicals	M. Q. and M. H. Sibley	384
Government Publications	Miles O. Price	401
Notes on Some Recent Documentary Materials	James B. Childs	410

(For list of Book Reviews, see next page)

Published Bimonthly by

THE AMERICAN POLITICAL SCIENCE ASSOCIATION

Editorial Office
209 South Hall
University of Wisconsin
Madison, Wisconsin

Secretary of the Association
1822 Sheridan Road
Northwestern University
Evanston, Illinois

Foreign Agents, P. S. King and Staples, Ltd., Great Smith St., Westminster, London

Entered as second class matter at the post office at Menasha, Wis., under the Act of August 4, 1912. Acceptance for mailing at special rate of postage provided for in Section 1103, Act of October 3, 1917, authorized May 12, 1926.

Made in the United States of America

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Cassirer, The Myth of the State. Thomas I. Cook 331
Verdross-Drossberg, Grundlinien der antiken Rechts- und Staatsphilosophie. Robert G. Neumann 333
Morgenthau, Scientific Man vs. Power Politics. R. K. Gooch 335
Ballinger, By Vote of the People. Henry Janzen 336
Gregory, Labor and the Law. William G. Rice, Jr. 338
Konvitz, The Alien and the Asiatic in American Law. Robert K. Carr 342
Galloway, Congress at the Crossroads. Lawrence H. Chamberlain .. 343
Latham, The Federal Field Service. Harvey Walker 344
Abbott, Management of the Federal Debt. Martin L. Faust 346
Lynch, The Concentration of Economic Power. Avery Leiserson ... 347
Stocking and Watkins, Cartels in Action; *Mason*, Controlling World Trade. Edward W. Carter 349
Marx (ed.), Elements of Public Administration. Geddes W. Rutherford 351
Law and Contemporary Problems: International Trade Barriers. J. William Robinson 353
Keeton and Schwarzenberger, Making International Law Work. Valentine Jobst, III 354
Welles, Where Are We Heading? Clarence A. Berdahl 356
Harper, The Russia I Believe In. Vera Micheles Dean 358
Carr, The Soviet Impact on the Western World. Henry Janzen ... 361
Goguel, La Politique des Partis sous la IIIe République. Mario Einaudi 362
Thomson, Democracy in France. C. A. Micaud 364
Lang, The Chinese Family and Society; *Chen*, Population in Modern China. Esson M. Gale 366
Briefer Notices 367
Pirsig, Cases and Materials on Judicial Administration; *Hendrick*, Lincoln's War Cabinet; *Cushman*, Leading Constitutional Decisions; *Lind*, Hawaii's Japanese; *Evans*, Bevin of Britain; *Herman*, The Rebirth of the German Church; *Deane*, The Strange Alliance; *Twitchell*, Saudi Arabia; *Eastman*, Canada at Geneva; *Nearing*, War or Peace; *Teeters*, Penology from Panama to Cape Horn; etc.

THE AMERICAN POLITICAL SCIENCE REVIEW, published bimonthly, is supplied to all members of the American Political Science Association. The annual dues are $5.00 a year ($3.00 for graduate and undergraduate students). $1.00 should be added for foreign postage.

Current issues, $1.00 per copy. Prices of other issues, and of complete volumes, are listed near the end of this number.

Applications for membership, orders for the REVIEW, and remittances should be addressed to Kenneth Colegrove, 1822 Sheridan Road, Northwestern University, Evanston, Ill.

Correspondence concerning contributions to the REVIEW—also books submitted for review—should be addressed to Frederic A. Ogg, Managing Editor, 209 South Hall, University of Wisconsin, Madison, Wis.

Articles and notes in the REVIEW are indexed in the *Reader's Guide to Periodical Literature*.

Copyright, 1947, by the American Political Science Association.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The American Political Science Review

VOL. XLI APRIL, 1947 NO. 2

THE CRIMINALITY OF AGGRESSIVE WAR

LEO GROSS

Fletcher School of Law and Diplomacy

The judgment delivered on September 30, 1946, by the International Military Tribunal brought to a close the first prosecution instituted under the London Agreement of August 8, 1945, entered into by the governments of the United States, France, Great Britain, and the U.S.S.R. But the publication of the judgment stirred a new wave of sharp criticism of the moral and legal foundations of the Nuremberg Trial. The charge that the Tribunal itself, as well as the substantive law which it applied, was *ex post facto* was renewed with vigor. So was the charge that no real justice was done at Nuremberg, because vanquished war criminals only were brought before the Tribunal and no attempt was made to try alleged war criminals of the victorious nations.

The latter charge naturally makes a strong appeal to public opinion. It would be difficult to dispute the soundness of this sentiment on any except technical grounds.[1] The ends of a true international legal order in time of peace as well as in time of war would unquestionably be better served if equal justice were meted out to all offenders against the law of nations, irrespective of whether the ultimate fortune of battle placed them in the camp of the victor or of the vanquished.[2] Ideally, victory should confer upon war criminals no immunity nor automatic amnesty.

The charge that from both the procedural and the substantive point of view the Nuremberg Trial was *ex post facto*, or retroactive,

[1] Sheldon Glueck, *The Nuremberg Trial and Aggressive War* (1946), pp. 98–99, 119–121.

[2] Charles Cheney Hyde, "Punishment of War Criminals," *Proceedings of the American Society of International Law*, Vol. 37 (1943), p. 43 f.; Sheldon Glueck, *War Criminals; Their Prosecution and Punishment* (1944), p. 116.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

goes, of course, to the very heart of the matter. Counsel for defense urged this point before the Tribunal.[3] The supporters of the legality of the trial concentrated their efforts on disproving the soundness of this defense. To this end, they undertook to prove that by 1939 there had developed a customary rule of international law making the initiation and waging of aggressive war not merely illegal but also a criminal act. If this is assumed to be correct, then the substantive international law applied by the Tribunal was not *ex post facto;* on the contrary, the criminality of aggressive war and of individual responsibility formed part of positive international law at the time of the German attack on Poland on September 1, 1939. However, even if this assumption were made, there would still remain the objection that the adjective law was *ex post facto*. This, by comparison, may appear a relatively minor point. Indeed, the creation of the Tribunal and its rules of procedure is so obviously *ex post facto* that a degree of formal retroactivity seems to be admitted.[4] This leaves for further examination and discussion the assertion that the substantive law of the International Military Tribunal as formulated in Article 6, paragraph (a), of the Charter was *ex post facto*.[5] No attempt will be made here to discuss the ques-

[3] Cf. "Judgment of the International Military Tribunal for the Trial of German Major War Criminals, Nuremberg, 30th September and 1st October, 1946," in *British Parliamentary Papers*, Misc. No. 12 (1946), Cmd. 6964, p. 38. Hereinafter referred to as the *Judgment.*

[4] Thus Glueck, *The Nuremberg Trial and Aggressive War*, p. 91. Sir Hartley Shawcross, Chief Prosecutor for Great Britain and Northern Ireland, argued before the Tribunal: "There is thus no substantial retroactivity in the provisions of the Charter. It merely fixes the responsibility for a crime already clearly established as such by positive law, upon its actual perpetrators." "The Trial of German Major War Criminals," *Proceedings before the International Military Tribunal*, Part 2, p. 57 (Published under the Authority of H.M. Attorney-General by His Majesty's Stationery Office, 1946), hereinafter referred to as *Proceedings*. But even procedural retroactivity is denied by the Tribunal. Arguing *de minore ad majorem*, and relying upon the precedent of the Hague Convention of 1907 respecting the Laws and Customs of War on Land, the Tribunal declared that although the Kellogg-Briand Pact "does not expressly enact that such wars [of aggression] are crimes, or set up courts to try those who make such wars," it was nevertheless possible to try and punish individuals for violations of the Pact just like individuals have in the past been tried and punished by military tribunals for violations of rules of land warfare. *Judgment*, p. 40. The validity of this analogy is not immediately clear.

[5] The relevant text of Article 6 of the Charter is as follows: "The Tribunal established by the agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tion whether war crimes *stricto sensu* and crimes against humanity as defined in paragraphs (b) and (c) of Article 6 of the Charter formed part of international law before or on September 1, 1939, or at any subsequent time prior to the Agreement of October 8, 1945.[5a]

In his capacity as Chief Counsel for the United States in prosecuting the principal Axis war criminals, Mr. Justice Jackson said that we could not deny "that our own day has its right to institute customs and to conclude agreements that will themselves become sources of a newer and strengthened international law." On the other hand, he maintained that "by the time the Nazis came to power it was thoroughly established that launching an aggressive war or the institution of war by treachery was illegal and that the defense of legitimate warfare was no longer available to those engaged in such an enterprise. It is high time that we act on the juridical principle that aggressive war-making is illegal and criminal."[6]

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) Crimes against peace: namely, planning, preparation, initiation, or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing." *Trial of War Criminals.* Department of State, Publication 2420, 1945, p. 16.

[5a] This paper is not concerned with the question whether it was just to try and punish Nazi war criminals or whether the maxim *nullum crimen sine lege, nulla poena sine lege* has a moral or legal, a subjective or objective, significance. These questions are discussed briefly by the Tribunal, *Judgment*, p. 39, and more extensively by Glueck, *op. cit.*, pp. 71 ff., and by Mr. Henry L. Stimson in "The Nuremberg Trial: Landmark in Law," *Foreign Affairs*, Vol. 25 (1947), p. 183. Also the extent to which states, and even their nationals, may be punished for engaging in an illegal war falls outside the compass of the present study. But the Tribunal declared that "the undoubted right" of the countries to which the German Reich unconditionally surrendered "to legislate for the occupied territories has been recognized by the civilized world." *Judgment*, p. 38. If international law recognizes the right of conquest, it may be arguable that it is within the power of the victor to impose upon the enemy measures short of total extinction, provided that in so doing the victor does not infringe an established principle of international law. This paper is mainly concerned with the reasoning by which the U. S. Chief of Counsel, Mr. Robert H. Jackson, and Professor Glueck have supported the law set forth in the Charter of the Tribunal. Incidentally, it suggests an alternative approach.

[6] "Report of Robert H. Jackson to the President, released by the White House on June 7, 1945," *Trial of War Criminals*, p. 9, and *Proceedings*, Part I, p. 81. The Tribunal also stressed the dynamic character of international law and, adopting the thesis urged upon it by the prosecution, declared "that resort to a war of aggression is not merely illegal, but is criminal." *Judgment*, p. 41. However, whereas Mr. Justice Jackson claims that the principle referred to above had been in existence at the time the Nazis came to power, the Tribunal held that the Charter "is the ex-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Mr. Justice Jackson developed the thought that "unjustifiable war" is a crime upon the basis of, and in reliance upon, the Kellogg-Briand Pact, the Geneva Protocol of 1924 for the Pacific Settlement of International Disputes, the Resolution of the Eighth Assembly of the League of Nations of 1921, and the Resolution adopted by the twenty-one American Republics at the Sixth Pan-American Conference held at Havana in 1928.[7]

Similarly, Professor Glueck, while affirming the authority of the United Nations "as an act of the will of the conqueror" to frame and adopt the Charter of the International Military Tribunal, undertakes to show "that the time has arrived in the life of civilized nations when an international *custom* has developed to hold aggressive war to be an international crime."[8] If the existence of such a custom could be proved, those lawyers "who insist that it is 'illegal' and '*ex post facto*' to regard aggressive war as a crime and to hold individual members of a Government responsible for such a crime"[9] would be convinced that their apprehensions or charges are without foundation in international law.

Somewhat along the lines of Mr. Justice Jackson's thought, Professor Glueck relies on the Kellogg-Briand Pact, the draft Treaty of Mutual Assistance of 1923, the Geneva Protocol of 1924, the League of Nations Resolution of 1921, the Havana Resolution of 1928, the General Convention of Inter-American Conciliation of 1928, and the Anti-War Treaty of Non-Aggression signed at Rio de Janeiro on October 10, 1933,[10] known as the Saavedra Lamas Pact. In addition, Professor Glueck refers to one or two unofficial statements[11] and to certain of the Hague Conventions of 1899 and 1907 and the Geneva Conventions of 1929 relative to the treatment of prisoners of war and for the amelioration of the condition of wounded and sick of armies in the field, respectively.[12]

---

pression of international law existing at the time of its creation," that is, in 1945. *Judgment*, p. 38. This is a significant discrepancy. As the violation of the Kellogg-Briand Pact by Germany occurred in 1939, the existence of the alleged principle should have been traced back to that period.

[7] *Trial of War Criminals*, p. 10. See also *Proceedings*, Part I, p. 81.

[8] Glueck, *op. cit.*, pp. 25, 26. See also *ibid.*, pp. 34, 45. [9] *Ibid.*, p. 25.

[10] *Ibid.*, pp. 28–32. The Tribunal supports its thesis by the Pact of Paris, the draft Treaty of Mutual Assistance, the Geneva Protocol, the Assembly Resolution of 1927, the Havana Resolution of 1928, the Treaty of Versailles, and the case *Ex parte* Quirin decided by the United States Supreme Court in 1942. *Judgment*, p. 40 f. [11] *Ibid.*, pp. 32–34.

[12] *Ibid.*, pp. 27, 28. The prosecution in the Japanese War Crimes Trial adopted

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

It goes without saying that the norms of positive international law are derived chiefly from custom as well as from treaty. The only question is whether there is sufficient evidence to prove the existence of a customary norm or principle of international law to the effect that aggressive war is an international crime. Unofficial statements are hardly relevant in this connection. They illustrate at best a trend in professional circles or in public opinion. The Hague and Geneva Conventions were designed to reduce the unavoidable suffering involved in warfare; to that extent, they may be said to have shaped the *ius in bello* without attempting to regulate extensively the *ius ad bellum*.

The Kellogg-Briand Pact, while it condemned recourse to war for the solution of international controversies, fails to make the violation of this declaration a crime under international law. The Pact also contains no evidence that a violation of the self-denying ordinance—not to resort to war as an instrument of national policy—would be considered as a crime under the Pact or under general international law. These two omissions are of some significance, since the draftsmen of the Pact, or at least some of them, must have been conversant with the Assembly Resolution of 1927 and the terms of the draft Treaty of Mutual Assistance of 1923 and of the Geneva Protocol of 1924. Here there was a rare opportunity to establish the rule that henceforth resort to aggressive war, or to war as an instrument of national policy, or as an instrument of solving international controversies, shall be deemed to constitute an international crime. The opportunity was not seized. This solemn treaty, duly signed and ratified or adhered to by the great majority of the members of the family of nations, lends no support to the view that aggressive war is a crime in the precise meaning of the term. On the contrary, far from viewing the violation of the declarations and obligations incorporated in the Pact as an international crime, the High Contracting Parties were content to declare in the preamble of the Pact that "any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this Treaty." This was an important though primarily negative clarification of the status of the treaty-breaking state: such a state could not use the Pact as a shield against appropriate action by the other signa-

a similar trend of thought. Cf. "Trial of Japanese War Criminals," Department of State, Publication 2613 (1946), p. 14 f.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tories. In view of the fundamental and unconditional obligation not to use war as an instrument of national policy, such a clarification was useful in removing any possible doubt in the matter.[13] Beyond this, the Pact neither specifies nor limits the sanctions which the opposing signatories may decide to impose upon the violators. They are free to act within the limits of international law.

Unofficial proposals for implementing the Kellogg-Briand Pact made by individual writers, and notably by the International Law Association,[14] are not relevant to this context. Moreover, it is conceded that both the responsible statesmen and writers as well "were far from regarding it as an international penal statute."[15] A resort to war in violation of the Kellogg-Briand Pact may properly be regarded as illegal, but not as criminal.[16] If the violation of the Pact cannot be regarded as an international crime, then the Pact must be struck from the list of instruments which have recently come to be construed as having contributed a legal foundation to the formation of a customary or conventional international norm making aggressive war a criminal offense.

On September 29, 1923, the Assembly of the League of Nations unanimously adopted a Resolution requesting the Council "to submit the draft Treaty of Mutual Assistance to the Governments for their consideration, asking them to communicate their views in regard to the aforesaid draft Treaty."[17] Article 1 of the draft reads: "The High Contracting Parties solemnly declare that aggressive war is an international crime and severally undertake that no one of them will be guilty of its commission."[18]

It is not clear whether the term "international crime" was used

[13] See note of the French Ambassador to the Secretary of State, Mar. 30, 1928. *Treaty for the Renunciation of War.* Department of State Publication No. 468, 1933, p. 27; note of the British Secretary of State for Foreign Affairs to the American Ambassador, May 19, 1928, *ibid.*, p. 44; address by M. Aristide Briand, French Minister of Foreign Affairs, delivered at Paris, Aug. 27, 1928, preceding the signing of the Treaty, *ibid.*, p. 314. See also James T. Shotwell, *War as an Instrument of National Policy* (1929), pp. 220–226.

[14] Cf. Quincy Wright, "The Meaning of the Pact of Paris," *American Journal of International Law*, Vol. 27 (1933), pp. 39–61; H. Lauterpacht, "The Pact of Paris and the Budapest Articles of Interpretation," *Transactions of the Grotius Society*, Vol. 20 (1935), pp. 178–202, particularly at p. 181 f. and p. 186; International Law Association, *38th Report* (1934), p. 66.

[15] Glueck, *op. cit.*, p. 19. [16] Thus Glueck, *ibid.*, p. 21.

[17] League of Nations, *Official Journal*, Sp. Supp. No. 13 (1923), p. 154.

[18] *Ibid.*, p. 403.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in the technical sense or as the expression of a general moral reprobation. No evidence has been adduced that the former sense was intended. It is significant, however, that none of the governments which submitted observations on the draft appeared to have been aware that in Article 1 a revolutionary departure from the prevailing attitude of the League towards the consequences of war was intended.[19] It would seem, therefore, that until substantial evidence to the contrary is submitted, the 1923 draft Treaty cannot be of assistance in proving that League Members intended to regard a resort to aggressive war as an international crime in the technical sense of Article 6, paragraph (a), of the Charter of the International Military Tribunal.[20] The fact that the draft never became a binding treaty productive of legal obligations would tend further to reduce its value as a precedent, even if the term "international crime" were shown to have the technical meaning which is apparently attributed to it at the present moment.

The Geneva Protocol for the Pacific Settlement of International Disputes, unanimously adopted by forty-eight delegations present in the Assembly of the League of Nations on October 2, 1924, and opened for signature on the same date,[21] asserts in the Preamble "that a war of aggression constitutes a violation of international solidarity and an international crime."[22] Still in the Preamble, the desire is expressed "of ensuring the repression of international crimes." It is said that this Protocol "did express the strong attitude of leading jurists and statesmen of most of the nations of the world regarding both the illegality and the criminalism of aggres-

[19] "Reduction of Armaments. Treaty of Mutual Assistance. Replies from Governments." Doc. A. 35. 1924. IX. The Finnish government, in its reply of Jan. 18, 1924, observed that "when the Committee describes as an international crime a war which violates the provisions of the Covenant, this is tautology as far as the members of the League are concerned, while the states non-members of the League would probably not recognize an act forbidden by the Covenant as an international crime unless it appears as such in the light of the general principles of international law." *Ibid.*, p. 5. [20] But see Glueck, *op. cit.*, p. 28 f.

[21] Assembly Resolution, Oct. 2, 1924, *Official Journal*, Sp. Supp. No. 23 (1924), p. 225. Mr. Justice Jackson's statement that the Geneva Protocol was "signed by the representatives of forty-eight Governments" (*Trial of War Criminals*, p. 10, and *Proceedings*, Part I, p. 80, is somewhat exaggerated. The Protocol was signed on behalf of nineteen Governments. Cf. "Signatures, Ratifications, and Accessions in respect of Agreements and Conventions Concluded under the Auspices of the League of Nations." Twenty-first List. *Official Journal*, Sp. Supp. No. 193 (1944), p. 155.

[22] The term "international crime" in this context presumably refers to aggressive war. Cf. P. J. Noel-Baker, *The Geneva Protocol* (1925), p. 29.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

sive war."[23] The use of the term "international crime" on two occasions, although only in the Preamble and not in any of the articles of the Protocol, is certainly significant. It remains to be seen whether here, any more than in the draft Treaty of 1923, the members of the League intended to attribute to the term "international crime" the technical meaning attributed to it now.

The comments of M. Politis and M. Beneš, two statesmen most intimately involved in the drafting of the Protocol, disclose no such intent. In view of the epochal importance now attributed to the words "international crime," it is surprising to find that M. Politis in his comment on the Preamble and on the condemnation of aggressive war did not find it necessary to draw the attention of the League members to the new approach to the problem of responsibility for aggressive war.[24] Nor is there any indication in the comments by M. Beneš that the punishment of the aggressor should thenceforth be based on the principle of individual criminality rather than, as theretofore, on the principle of collective responsibility. On the contrary, the references in the Protocol itself to the sanctions of Article 16 of the Covenant would seem to confirm the intention of the draftsmen to fit the Protocol into the framework of the Covenant.[25] In commenting upon the sanctions against an aggressor state, M. Beneš stresses Article 15 of the Protocol which introduces the idea that the cost of measures undertaken for the repression of aggression "shall be borne by the aggressor state up to the extreme limit of its capacity."[26] This statement does not permit of any other conclusion than that the Geneva Protocol, in spite of the words "international crime," was not intended to change the collective character of the sanctions provided for in Article 16 of the Covenant. If the latter have sometimes been referred to as "punitive" measures, "punitive" in such a context did not mean "criminal."

In the memorable words of M. Beneš, the purpose of the draftsmen of the Geneva Protocol was "to make war impossible, to kill it, to annihilate it."[27] To this purpose the "gaps" in the Covenant

[23] Glueck, *op. cit.*, p. 30.

[24] Cf. "General Report submitted to the Assembly on behalf of the First and Third Committees by M. Politis, Rapporteur for the First Committee, and M. Beneš, Rapporteur for the Third Committee." Doc. A. 135 (1). 1924. IX. *Official Journal*, Sp. Supp. No. 23, 1924, pp. 479 ff., at p. 482 f.

[25] But cf. Glueck, *op. cit.*, p. 30. [26] Cf. "General Report," p. 495.

[27] *Ibid.*, p. 497.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

were filled by establishing a comprehensive system of compulsory arbitration and an effective chain of sanctions. But this system included no penalty for individuals, and it certainly failed to implement the notion that aggressive war constitutes an international crime.

The Report of the British Delegates relating to the Geneva Protocol, November 1, 1924, would probably have drawn the attention of the British government to any intended revolutionary changes in the structure of international law and of the Covenant of the League. In the view of the British delegates, however, there was apparently no need for doing so; as for the Geneva Protocol, "so far as it contains anything new, it is to be found in the definition of aggression which follows as a necessary corollary to the limitations inserted in the establishment of a universal system of peaceful settlement. But even here the principle is not new."[28] Here—that is, in Article 10 of the Geneva Protocol—is the new feature; but even this apparent innovation is said to be merely an elaboration of the Covenant. Be that as it may, Article 10 certainly contemplated only states as aggressors, and only states could commit the crime of aggression.[29] The "guilt" of initiating and waging an aggressive war—that is, the guilt of committing the international crime mentioned in the Preamble of the Protocol—would be the guilt of a state. It could not be otherwise. The sanctions elaborated in Article 11 are quite logically conceived as collective measures directed against the "criminal"—that is, the aggressor state.

On the basis of this brief survey of preparatory work and contemporary opinion, it is difficult to accept the proposition that "the signature of the Protocol by the leading statesmen of the world, representing the vast majority of civilized states and peoples, is itself evidence of a strongly entrenched custom to regard aggressive war as an international crime."[30] It seems scarcely compatible with

[28] "League of Nations. Fifth Assembly. Report of the British Delegates relating to the Protocol for the Peaceful Settlement of International Disputes." *British Parliamentary Papers*, Misc. No. 21 (1924), Cmd. 2289, p. 8. Cf. D. H. Miller, *The Geneva Protocol* (1925), pp. 11, 23 f., 106–113. Mr. Miller examined the Geneva Protocol "primarily from the legal viewpoint" (*ibid.*, p. 3), and the fact that he virtually disregarded the condemnation of war as an international crime (*ibid.*, p. 54) may perhaps be interpreted as implying that, from a legal standpoint at any rate, no criminal-law principles have found their way into the Protocol.

[29] Noel-Baker, *op. cit.*, p. 114.

[30] Glueck, *op. cit.*, p. 29, note 14. It may be observed in passing that the Protocol was signed on behalf of no more than nineteen governments, which did not repre-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the requirements of sound juristic construction to put forward the mere repetition of the term "international crime" as evidence of a "strongly entrenched custom."

The Resolution adopted by the League of Nations Assembly on September 24, 1927, is regarded as a further link in the chain of events which are said to have contributed to the formation of an international custom to regard aggressive war as an international crime. In this Resolution, the Assembly expressed its conviction "that a war of aggression can never serve as a means of settling international disputes and is, in consequence, an international crime."[31] In the view of Professor Glueck, this Resolution shows "how strong was the conviction that the time had arrived in the affairs of states and their peoples, to call a spade a spade."[32] If he means thereby that the Assembly Resolution was intended to create a rule of international law making aggressive war an international crime in the technical sense of the word, such an interpretation finds no support in the words of the Rapporteur of the Third Committee, M. Sokal, who introduced the Resolution. M. Sokal reported to the Assembly that the Committee was of the opinion that the Resolution "would have a salutary effect on public opinion and would help to create an atmosphere favorable to the League's future work in the matter of security and disarmament." In order to dispel any possible doubt as to the interpretation to be placed upon the proposed resolution, M. Sokal made the following significant statement:[33] "While recognizing that the draft resolution does not constitute a regular legal instrument which would be adequate in itself and represent a concrete contribution towards security, the Third Committee unanimously agreed as to its great moral and educative value."

As author of the Resolution and as Rapporteur of the Third Committee, M. Sokal was certainly in a position to submit an au-

---

sent the vast majority of civilized states and peoples. It was signed on behalf of Albania, Belgium, Brazil, Bulgaria, Chile, Czechoslovakia, Estonia, Finland, France, Greece, Haiti, Latvia, Liberia, Paraguay, Poland, Portugal, the Kingdom of the Serbs, Croats and Slovenes, Spain, and Uruguay. Cf. "Signatures, Ratifications . . ." p. 155. The Tribunal repeats almost textually Professor Glueck's estimate of the Geneva Protocol. *Judgment*, p. 40. It thus repeats his error regarding "the vast majority of civilized states and peoples."

[31] League of Nations, *Official Journal*, Sp. Supp. No. 54, 1927, p. 155.

[32] Glueck, *op. cit.*, p. 31.

[33] League of Nations, *Official Journal*, Sp. Supp. No. 54, 1927, p. 155.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

thoritative interpretation of the Resolution's sense and intent. There is no evidence that the members of the League interpreted the Resolution which they adopted in a different light, e.g., as productive of legal changes in the body of positive international law. On the basis of available evidence, the conclusion seems inevitable that no legal significance can be attached to that Resolution, and that the latter cannot serve to substantiate the far-reaching claims put forth on its behalf.[34] The attribution to the Assembly of legislative powers in the domain of international law would necessarily have to be based on two assumptions: first, that the Assembly was competent to create international law; and secondly, that the Assembly was competent to do so by means of resolutions. For both of these assumptions there is no foundation.[34a]

It remains to consider some instruments adopted by the American Republics. At the Sixth International Conference of American States held at Havana in 1928, a Resolution on Arbitration and Conciliation was adopted in which the American Republics desired "to express that they condemn war as an instrument of national policy in their mutual relations."[35] In another Resolution on Aggression adopted at the same Conference, the American States, considering "that war of aggression constitutes an international crime against the human species," resolved that "all aggression is considered illicit and as such is declared prohibited."[36] It does not appear from the official Report of the American Delegation to that Conference that any particular importance or legal meaning was attached to the condemnation of war or to the declaration that it constituted an international crime.[37]

Pursuant to the Havana Resolution, an International Confer-

[34] Cf. *ibid.*, p. 83, where M. Sokal explains the motives behind the draft resolution which he submitted to the Assembly. M. Sokal's proposal was discussed in the Third Committee. Cf. Minutes of the Third Committee, *Official Journal*, Sp. Supp. No. 57, particularly pp. 45–47. The statement of the delegate of the Netherlands, M. Loudon, is of special significance because it draws a clear line between the "great moral value" of the Polish proposal and "the outlawry of war in a more legal form." *Ibid.*, p. 46.

[34a] Cf. Dietrich Schindler, "Die Verbindlichkeit der Beschlüsse des Völkerbundes" (1927), *passim.*

[35] James Brown Scott (ed.), *International Conferences of American States, 1889–1928* (1931), p. 437.

[36] *Ibid.*, p. 441 f.

[37] Cf. "Report of the Delegates of the U.S.A. to the Sixth International Conference of American States." U. S. Govt. Printing Office (1928), p. 26.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ence of American States on Arbitration and Conciliation was held in Washington in 1928-29. This Conference adopted the "General Convention of Inter-American Conciliation," the Preamble of which expressed the desire "to demonstrate that the condemnation of war as an instrument of national policy in their mutual relations . . . constitutes one of the fundamental bases of inter-American relations."[38] The Convention, however, deals with arbitration and conciliation and makes no attempt at implementing the condemnation of war. It may be pertinent to refer here to the cogent statement of the American delegate, Mr. Charles E. Hughes, in the Committee on Arbitration:[39] "We are not here to add to international law. We are not here to codify international law. We are not here to create, we have no power to create, additional rights under international law. We have no power to impose upon any state additional duties under international law. We are simply providing means for pacific settlement."

Finally, the Anti-War Treaty on Non-Aggression and Conciliation, signed at Rio de Janeiro on October 10, 1933, included in the Preamble a condemnation "of wars of aggression and territorial acquisitions that may be obtained by armed conquest." In Article I, the contracting parties "solemnly declare that they condemn wars of aggression in their mutual relations or those with other states."[40] This treaty, commonly known as the Saavedra Lamas Pact, is the American counterpart to the Kellogg-Briand Pact. Carlos Saavedra Lamas explained the purpose of the proposed Anti-War Pact in these terms: "The Argentine Government wishes thus to contribute to the uniform acceptance of the Kellogg-Briand Pact and, what is of greater importance, to its effective application through the conclusion among the South American Republics of a similar and coinciding agreement, intended to coöperate in the attainment of the same lofty aims."[41] The Saavedra Lamas Pact is thus presented as an improved Kellogg-Briand Pact. The improvement, however, is not sought in the realm of penal sanctions against

[38] Scott, *op. cit.*, p. 455.

[39] "Proceedings of the International Conference of American States on Conciliation and Arbitration," Washington, Dec. 10, 1928–Jan. 5, 1929. U. S. Govt. Printing Office (1929), p. 614.

[40] U. S. Treaty Series, No. 906, 1936.

[41] "The Anti-War Treaty proposed by Argentina and the Brazilian Reply," *Bulletin* of the Pan American Union, Apr., 1933, p. 320 ff., at p. 327.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

individuals, but in the realm of methods and procedures for the peaceful settlement of international controversies.[42]

The conclusion drawn by Professor Glueck from the above resolutions, treaties, and draft treaties is as follows:[43] "All these solemn expressions of the conviction of civilized States and statesmen regarding the need for conciliation, for the settlement of international disputes by pacific means only, for the renunciation of war as an instrument of national policy, and, logically, for the recognition that aggressive war is an international crime, greatly reënforce whatever inference to that effect is derivable from the Briand-Kellogg Pact itself. They may be regarded as powerful evidence of the existence of a widely prevalent custom among civilized peoples sufficient to energize a juristic climate favorable to the regarding of a war of aggression as not simply unjust or illegal, but downright *criminal*."

Mr. Justice Jackson, having made a somewhat less exhaustive review of the relevant documents, prefers to rely chiefly upon the Kellogg-Briand Pact, and he argues that a violation of this Pact "cannot be regarded as anything less than a crime against the international community." He concludes: "We therefore propose to charge that a war of aggression is a crime, and that modern international law has abolished the defense that those who incite or wage it are engaged in legitimate business."[44] The preparatory work, the intrinsic meaning of the acts in question, and contemporary opinion, it is believed, fail to substantiate any such far-reaching conclusions. The most that may be said is that governments on several occasions have used a terminology which, separated from its context and attending circumstances, can easily be misunderstood. It has indeed been said that "the concepts of crime, culpability, or responsibility" employed in connection with aggressive war "were concepts of national criminal law which could

[42] *Ibid.*, p. 341 f.

[43] Glueck, *op. cit.*, p. 34. Similarly Sir Hartley Shawcross: "Thus there is no doubt that by the time the National Socialist State of Germany had embarked upon the preparation of the war of aggression against the civilized world, and by the time it had accomplished that design, aggressive war had become, in virtue of the Pact of Paris, and the treaties and declarations to which I have referred, illegal and a crime beyond all uncertainty and doubt. And it is on that proposition, and fundamentally on that Universal Treaty, the Briand-Kellogg Pact, that Count 2 of this Indictment is principally based." *Proceedings*, Part II, p. 54.

[44] *Trial of War Criminals*, p. 10. See also *Proceedings*, Part I, p. 80 f.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

hardly be adapted to international relations."[45] Similarly, several governments expressed the opinion that "the desire to effect an extension of sanctions corresponding to the extension of the prohibitions of resort to war contained in the Covenant arose from pushing too far the analogy with the conception of crime and punishment in municipal law."[46]

It is significant that Count 2 of the indictment against the Nazi defendants is not based upon the charge that they had violated "customary international law."[47] The charges preferred against them do not include the various resolutions and draft treaties which are said to have formed new customary international law in the matter of aggressive war and individual criminal responsibility. They include notably the Kellogg-Briand Pact and several other treaties, agreements, and assurances to which Germany was a party.[48] Under positive international law, a violation of these treaties, agreements, and assurances exposed Germany to such sanctions as the governments concerned should eventually determine as appropriate with a view to insuring, in the future, a greater degree of respect for international legal obligations.

In the formation of customary international law, the time element is, of course, important, but perhaps not exclusively controlling. A mere practice of states, a habit of doing things in a certain manner, no matter how long or how widely practiced, could not, it is submitted, create by itself new customary international law. The Permanent Court of International Justice, in the Lotus case, rejected the French attempt to derive a rule of positive international law regarding jurisdiction in collision cases from the practice of states by saying that the agent of the French government had merely succeeded in showing "that states had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so." The Court went on to say: "For only if such abstention were based on their being conscious of having a duty to abstain would it be possible to speak

[45] Remarks made by Dr. Cohn, the delegate of Denmark, in the First Committee of the Tenth Assembly, on Sept. 17, 1929, in connection with the proposed amendment of the Covenant in order to bring it into harmony with the Kellogg-Briand Pact. *Official Journal*, Sp. Supp. No. 76 (1929), p. 29.

[46] "Report of the First Committee [Rapporteur M. Henri Rollin] to the Assembly." Doc. A. 86. 1931. V. *Official Journal*, Sp. Supp. No. 93 (1931), p. 220.

[47] But see Glueck, *op. cit.*, p. 36.

[48] *Trial of War Criminals*, Appendix C., p. 82–89.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of an international custom. The alleged fact does not allow one to infer that states have been conscious of having such a duty."[49] The same thought, of course, is at the root of Article 38, paragraph 2, of the Statute of the Permanent Court of International Justice, which reads: "International custom, as evidence of a general practice accepted as law."[50] The Statute of the International Court of Justice contains an identic clause in Article 38, paragraph 1(b). Westlake said: "Custom must not be confounded with mere frequency or even habit of conduct. In any state or society in which customary law is admitted, custom as a part of law means the conduct which is enforced as well as the strict or loose nature of the society allows . . . and which is followed as well from the fear of such enforcement as from the persuasion that the received rule requires such conduct to be followed. In other words, custom is that line of conduct which the society has consented to regard as obligatory."[51] Thus the mere habit of repeating certain formulae must be distinguished from the practice or usage of states which is inspired by a sense of legal obligation. Little, if any, evidence of such practice has been offered in the matter of criminal responsibility of individuals for instituting wars of aggression.

Moreover, it is common ground for a majority of international lawyers that the law of nations is based upon the consent or acquiescence of states.[52] It must be noted that the text of, and the circumstances attending, the resolutions, draft treaties, and treaties discussed above do not disclose on the part of the governments concerned the necessary consent to or acquiescence in the establishment of a new rule of international law making aggressive war a crime in the technical sense of the word.

Without stretching to the breaking-point the accepted notions of

[49] Permanent Court of International Justice, *Publications*, Series A, No. 10 (1927), p. 28.

[50] Judge Manley O. Hudson, commenting on this clause, said: "The elements necessary are the concordant and recurring action of numerous states in the domain of international relations, the conception in each case that such action was enjoined by law, and the failure of other states to challenge that conception at the time. The appreciation of these elements is not a simple matter, and it is a task for persons trained in law." *The Permanent Court of International Justice, 1920–1942* (1943) p. 609.

[51] John Westlake, *International Law*, Vol. I (1910), p. 14; Charles Cheney Hyde, *International Law* (second ed.), Vol. I (1945), p. 11.

[52] Green H. Hackworth, *Digest of International Law*, Vol. I (1941), p. 1 ff.; Hyde, *op. cit.*, p. 4 ff.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

custom in international law, it does not seem admissible to deduce such a rule from mere pronouncements that aggressive war is condemned as international crime. Such pronouncements, significant as they undoubtedly are, were made, as M. Sokal explains, for their "moral and educative value."[52a] Having regard to the usual circumspection of governments, it appears inconceivable that what may probably become the most revolutionary change in the history of modern international law should have been brought about in a haphazard manner and without thorough preparation or discussion, and without clearly expressed intent on the part of the governments concerned. For this reason, it would seem doubtful whether an international tribunal, displaying the traditional judicial caution in the administration of international law, would have found the Nazi defendants guilty of "crimes against peace" under customary international law.[53] For the same reason, the Charter of the International Military Tribunal cannot be regarded as merely receiving, confirming, or codifying an existing "international custom, as evidence of a general practice accepted as law."

Mr. Justice Jackson's contention "that the London Agreement only recognized an evolution that already had been consummated"[54] does not seem to be supported by sound evidence. It would be more in harmony with the teachings and practice of international law to say that the Charter created, *inter partes*, a new principle for which, this may be admitted, a favorable climate had been prepared in the

[52a] The Tribunal, however, finds that the acts in question "may be regarded as strong evidence of the intention to brand aggressive war as an international crime." *Judgment*, p. 40.

[53] The value of the judgment of the International Military Tribunal, unsupported as it is by authority, as a precedent in international law is problematic. True it is that certain *dicta* of the Tribunal may be regarded as endorsing the views set forth by Messrs. Jackson and Glueck. It is, however, important to bear in mind that the Tribunal repeatedly declared that it was bound by the law established by the Four Powers in the Charter. Thus, with reference to Article 6 of the Charter, it stated: "These provisions are binding upon the Tribunal as the law to be applied to the case." And in a different context it said categorically that "the law of the Charter is decisive, and binding upon the Tribunal." Of significance is also the following: "The Charter makes the planning or waging of a war of aggression or a war in violation of international treaties a crime; and it is therefore not strictly necessary to consider whether and to what extent aggressive war was a crime before the execution of the London Agreement. But in view of the great importance of the questions of law involved, the Tribunal has heard full argument from the Prosecution and Defence and will express its views on the matter." *Judgment*, pp. 3, 38.

[54] Foreword to Professor Glueck's book, *The Nuremberg Trial and Aggressive War*, p. x.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

inter-war period. In doing so, the Charter may be regarded as expressing a profound sense of justice and as adapting the traditional concept of the sanctions in international law to the more refined technique of law-enforcement prevailing in the municipal law of civilized communities. In making individuals responsible for fidelity to fundamental international law, it takes into account a widespread postulate that individuals should be made subjects of international law to a larger extent and on a more permanent basis than had been the case heretofore. The Charter may well come to be regarded as having blazed a new trail for "the firm establishment of the understandings of international law as the actual rule of conduct among governments."[55] But until this principle is generally accepted by states, there will be a period of transition from the traditional concept of collective responsibility for illicit conduct of states to the new concept of individual responsibility for crimes against international law.[56]

It was perhaps with the desire to hasten this process that President Truman, in his opening address to the General Assembly of the United Nations on October 23, 1946, recalled that "twenty-three members of the United Nations have bound themselves by the Charter of the Nuremberg Tribunal to the principle that planning, initiating, or waging a war of aggression is a crime against humanity for which individuals as well as states shall be tried before the bar of international justice."[57] While this constitutes a strong endorsement of the Charter of the International Military Tribunal, one may well doubt whether the particular formulation chosen by the President lends support to the thesis advocated by Mr. Justice Jackson. Obviously in contradiction with that thesis, however, appears a statement made by Mr. Trygve Lie, Secretary-General of the United Nations, in his oral supplementary report to the General Assembly: "In the interest of peace and in order to protect mankind against future wars, it will be of decisive significance to have the principles which were employed at the Nuremberg trials, and according to which the German war criminals were sentenced, made a permanent part of the body of international law

[55] Preamble to the Covenant of the League of Nations.

[56] Hyde, *op. cit.*, p. 8 f. See also H. Lauterpacht, *The Development of International Law by the Permanent Court of International Justice* (1934), p. 103; W. Friedman, "International Law and the Present War," *Modern Law Review*, Vol. 3 (1941), p. 179 f.

[57] *Journal of the United Nations*, No. 13: Supp. A-A/P. V/34, p. 8.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

as quickly as possible."[58] Here the Secretary-General seems to proceed on the theory, which is believed to be correct, that thus far the criminal responsibility of individuals for crimes against peace does not form part of international law. It is to be hoped that a way will be found, by amending the Charter of the United Nations or otherwise, to establish *pro futuro* rather than *pro praeterito*, as is the case in the Charter of the International Military Tribunal, the truly revolutionary principle of individual responsibility for crimes against peace.[59] This is a task of the highest importance, and one which can best be accomplished by that process known as international legislation. It cannot, it is submitted, be the task of international lawyers to attempt to remove "the inconsistencies and shortcomings of international law . . . by juristic effort, however well-meaning."[59a]

Is it, then, in the light of the foregoing considerations, necessary, as has been thought by some critics of the Nuremberg Trial, to conclude that the trial was "illegal" because *ex post facto*? Illegal from the viewpoint of international law, or from that of the municipal law of one or the other states party to the London Agreement, of which the Charter of the International Military Tribunal forms

[58] *Journal of the United Nations*, No. 15: Supp. A-A/P. V/35, p. 24.

[59] The General Assembly of the United Nations, on Dec. 11, 1946, adopted unanimously a Resolution proposed by the United States Delegation in which it "affirms the principles of international law recognized by the Charter of the Nürnberg (*sic*) Tribunal and the judgment of the Tribunal" and "directs the Committee on the codification of international law . . . to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nürnberg (*sic*) Tribunal and in the judgment of the Tribunal." *Journal of the United Nations*, No. 58: Supp. A-A/P. V./55, p. 485. The delegate of Cuba pointed out in the Sixth Committee (Legal Questions) that he could not vote for the proposed resolution "because it affirmed the principles of international law by a mere reference to them, without enumerating them explicitly. The Cuban delegation," he said, "thought that the adoption of principles of such importance should not be based on mere references, but should be the outcome of a thorough study of each of the principles concerned." *Journal of the United Nations*, No. 56: Supp. No. 6-A/C. 6/123, p. 127. For these reasons, the representatives of Cuba, Argentina, and Peru voted against the proposal in the Sixth Committee. *Journal of the United Nations*, No. 58: Supp. No. 6-A/C. 6/127, p. 129. See also Documents A/C. 6/116 and A/236. It should be noted that this Resolution followed the action of nineteen governments of the United Nations which had previously expressed their adherence to the London Agreement. Cf. *Judgment*, p. 1.

[59a] Lauterpacht, *The Pact of Paris and the Budapest Articles of Interpretation*, p. 190.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

an integral part? Obviously, the standard of comparison which must be adopted cannot be other than that of international law.

The relevant question then is: Is there in positive international law a rule, comparable to Article I, sec. 9, par. 3, of the Constitution of the United States, prohibiting *ex post facto* legislation? Those who affirm the illegality of the Nuremberg Trial[60] have not taken the trouble to prove the existence of such a restrictive rule. It would indeed be difficult to do so, for, as the Permanent Court of International Justice declared in the Lotus case, restrictions upon the independence of states cannot be presumed.[61]

Starting from this premise, the following line of reasoning might be adopted to justify the legality of the London Agreement. In a primitive society such as the international community, in which there are no centralized institutions for legislation, adjudication, and law enforcement, states must provide for their security as best they can, always acting within the accepted rules and principles of international law. To assert the existence of a prohibition to create new norms and endow them with retroactive effect would be a serious limitation upon the independence of states. Furthermore, such an assertion could be successfully maintained only if it were shown that there are in international law not merely substantive, but also formal, norms having the character of a constitutional or higher law which cannot be changed by the traditional process of treaty-making between independent states. This presupposes an analogy between international law and, e.g., the federal law of the United States, which is based on a written, enacted constitution. For such an analogy there appears to be no foundation in the theory of positive international law or in the practice of states. If an analogy must be drawn, it is suggested that the British constitution lends itself better for this purpose than the American. Although lacking a formal constitution in the American sense, there are in Great Britain principles and norms having constitutional character. But Parliament is supreme. An act of Parliament could not be held unconstitutional even if it materially altered or suspended some of the fundamental norms of the realm.[62]

[60] Cf. writers cited in Glueck, op. cit., p. 74, note 3. As mentioned above, Professor Glueck seems to deny substantive, but does not entirely rule out formal, retroactivity. *Ibid.*, p. 91.

[61] Permanent Court of International Justice, *Publications*, Series A, No. 9, p. 18.

[62] See Frederic A. Ogg, *European Governments and Politics* (2nd ed., 1945), p. 36 f.: "Leaving out of account practical and moral restraints which operate power-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

A similar situation may be said to prevail in common international law. States are bound by the body of international law. But at the same time they are, like Parliament, supreme law-makers. A treaty may be said to derogate a custom and a later treaty to derogate an earlier treaty between the parties concerned. Thus, even if *ex post facto* norms were prohibited by international law, which has been denied,[63] it could be argued that states may depart from this prohibition by mutual consent without committing an illicit act.

If this line of reasoning were accepted as admissible, a good deal of current criticism might have been avoided if the Four Powers, following the precedent of the Treaty of Versailles, had decided to secure the adherence of the German government to the London Agreement. In the case of Germany, this was not possible because no German government was at the time in existence.[64] The Four Powers could have acted on behalf of Germany.[65] This, they have not done. Could they impose their will upon Germany? This is, in fact, asserted by Professor Glueck,[66] and the International Military

fully upon it, and thinking only of what may be done under the law, Parliament can alter or rescind any charter, agreement, or statute; it can cause any official of the government to be dismissed and any judicial decision to be made of no effect; it can put an end to any usage and overturn any rule of common law; it can bend the constitution in any direction that it desires. It follows that every parliamentary act is 'constitutional'; if a measure is passed which is contrary to the constitution as it has hitherto stood, the constitution simply becomes something different in that regard. One who follows English political discussion, even from afar, will now and then hear it charged that a legislative proposal, or even a law, is unconstitutional. But this means only that somebody considers the offending proposal or act to be inconsistent with previously accepted fundamental law, or with an established usage, or with international law, or perhaps only with the accepted standards of morality. An act so regarded is legally quite as valid and enforceable as if no question had been raised. No one can allege that it is *ultra vires*. The word of Parliament, *i.e.* the *latest* word, is law, however it may cut across existing constitutional arrangements; and as such it will be enforced by the courts."

[63] Hans Kelsen, *Peace Through Law* (1944), p. 87.

[64] In the case of the International Military Tribunal for the Far East, the consent of the Japanese government to the trial of Japanese war criminals is presumed to have been granted in the instrument of surrender signed by Japan on Sept. 2, 1945. Department of State *Bulletin*, Vol. XIV (1946), p. 361.

[65] The basis for this is the Declaration regarding the Defeat of Germany and the Assumption of Supreme Authority with respect to Germany, paragraph 5 of the Preamble, and Articles 11 and 13. *American Journal of International Law*, Vol. 39 (1945), Supp., p. 171 ff.

[66] Glueck, *op. cit.*, p. 25: "There is no question but that, as an act of the will of the conqueror, the United Nations had the authority to frame and adopt such a Charter."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Tribunal, declared:[67] "The making of the Charter was the legitimate exercise of sovereign legislative power by the countries to which the German Reich unconditionally surrendered."

In concluding, it may be well to recall the words of Grotius concerning "the duty of the victor toward those who make an unconditional surrender." On the one hand, Grotius observed that "wars are well ended when they terminate with pardoning." But on the other hand, he remarked: ". . . I do not think that it makes any difference whether the one who surrenders says that he surrenders himself to the wisdom, or to the moderation, or to the mercifulness, of the victor. All these words are merely gracious expressions. The fact remains that the victor becomes absolute master."[68] It seems that the passage of three hundred years or so has not materially improved the condition of the enemy that has unconditionally surrendered.

[67] *Judgment*, p. 38.

[68] Grotius, *De Jure Belli ac Pacis*, translated by Francis W. Kelsey. "Classics of International Law," ed. by J. B. Scott, Vol. II (1925), pp. 826, 828.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

RELIGIOUS LIBERTY v. POLICE POWER: JEHOVAH'S WITNESSES

HOLLIS W. BARBER
Tulane University

I

It is stressing the obvious to observe that the state must often resolve conflicts between certain of its constitutional powers and certain equally constitutional private rights. Such is the age-old controversy of liberty versus authority, familiar to every social scientist. Such is the contemporary controversy between "Bible-dizzy but patently sincere"[1] zealots of the Watch Tower Bible and Tract Society, more widely known as Jehovah's Witnesses, on the one hand, and the police power on the other. There is nothing novel about a quarrel between religion and the police power, as witness the Mormons; but a new twist is now given by the personalities of Jehovah's Witnesses and their unique ways of practicing their faith.

Much of their attitude is reflected in their slogans, "Religion is a Racket," "Religion is a Snare," and "Millions Now Living Will Never Die." With a fine neutrality, they consign to the leaping flames all existing religious beliefs other than their own, although they are especially antagonistic to Roman Catholicism. Followers of "Pastor" Charles Taze Russell and "Judge" Joseph Frederick Rutherford,[2] they are serene in their belief that the second coming of Christ is due momentarily, that there is no time to build churches, and that the "witness work" must be carried on by the direct method of calling on people in their homes, distributing pamphlets and playing records on portable phonographs describing their publications and beliefs for the edification of whomsoever will listen. Soon He will return and all but members of the Society will be

[1] *Time*, June 24, 1940, p. 54.

[2] Russell was never formally ordained a minister, and Rutherford's judicial experience was apparently limited to a short term as a Missouri circuit judge. The "Judge" entered the movement as Russell's legal adviser, and took over the leadership upon the latter's death in 1916; he retained it until his own death in 1941. He is said to have spent some time in Atlanta as a conscientious objector in World War I. In 1930, he reportedly deeded a California house, garage, and two automobiles in perpetuity to await the earthly reappearance of King David, Gideon, Barak, Samson, and kindred figures. But whatever his foibles, it is beyond doubt that his organizational and administrative talents were largely responsible for the Society's present prosperous status. Cf. *Time*, July 29, 1940, pp. 40–41; *Literary Digest*, May 2, 1936, p. 18.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

swept away; thus "millions now living will never die." This assurance of immortality beginning in the immediate future constitutes a powerful drive toward fanatical proselyting, and in order to speed the good work every Witness is an ordained minister whose duty it is to spread the Word. Although not universal, it is often true that the Witness assumes an exceedingly aggressive, intolerant, and even boorish attitude toward a prospective convert, apparently assuming that, since he is himself the repository of all religious wisdom, the other must be a dolt if he does not immediately see the light. A variation of the phonograph technique is for the Witness to offer to leave books and pamphlets and to request a "contribution," which may or may not be in proportion to the cost of the printed matter. The Witnesses are very clear on this point—their "literature" is not sold; it is given freely, as is the reciprocal contribution in the amount set by the donor's conscience. This point has an obvious bearing on the commercial (as contrasted with the religious) nature of these transactions—a matter of importance when the Witnesses disobey a city official's demand that they take out permits before peddling or soliciting as is required of other itinerant salesmen of books or merchandise.

The Witnesses' numerous conflicts with the law may be traced in major part to their literal interpretation of Exodus 20:3–5: "Thou shalt have no other Gods before me. Thou shalt not make unto thee any graven image, or any likeness of anything that is in Heaven above, or . . . in the earth, . . . or in the water under the earth. Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God. . . ." Any kow-towing to governmental licensing regulations, or signs of obeisance such as saluting the flag, come under the prohibition against bowing down to graven images. Thus it is that when one of the faithful refuses to procure a municipally-required permit to distribute handbills, to hold a parade, or to solicit charitable contributions, he maintains that he was "sent by Jehovah to do His work," and that to have applied for a permit would have been "an act of disobedience to His commandment."[3] Similar ideas account for the refusal to salute the flag. The Witnesses persistently maintain that flag-salute and permit-ordinances are contrary to the religious freedom guaranteed

[3] The refusal to take out a permit is a matter of principle, regardless of whether any fee is charged.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

specifically in the First Amendment and by construction in the Fourteenth.

II

Four years ago, Victor Rotnem and F. G. Folsom, Jr., in an article in this REVIEW,[4] discussed "Recent Restrictions upon Religious Liberty," especially as concerning Jehovah's Witnesses, and examined the relevant Supreme Court decisions. Since that time, Supreme Court minds and personnel have changed, and the tolerantly pro-Witness attitude which in 1942 was only beginning to manifest itself has apparently developed into a definite policy of the Court. It is therefore proposed to survey the Court decisions of the last nine years in those cases which directly involved the Witnesses, so as to discover Court trends and the present judicial attitude on this phase of the important problem as to how far religious liberty may be tolerated before it becomes limitable license under the police power.

The very humble beginning of the story was the case of Leoles v. Landers,[5] in which the Supreme Court, in a *per curiam* decision in 1937, refused, for want of a substantial federal question, to review a Georgia decision upholding that state's right to require a student in a public grade school to salute the flag, even though the student's religious scruples, as a member of Jehovah's Witnesses, were alleged to forbid such salute. Not only was this a rebuff to the Witnesses' contention, but it was considered especially ominous that the Court cited its well-known decision in Hamilton v. Regents of the University of California in which it had held that conscientious scruples against war were insufficient grounds for a student at that University to gain exemption from the compulsory course in military training.[6] It is a far cry from this inauspicious beginning to other opinions handed down in the next five years, and to the statement which *Time* could make in mid-1940 to the effect that the American Civil Liberties Union was then defending upwards of 1,300 Witnesses in nearly 200 cases.[7]

Several other decisions followed shortly, all involving "Witness work" of one kind or another. In 1938, the Court handed down a decision in Lovell v. City of Griffin, Georgia,[8] in which all eight participating justices joined, holding void on its face a city ordi-

[4] Vol. 36, No. 6 (Dec., 1942), pp. 1053–1068.
[5] 302 U.S. 656, decided Dec. 13, 1937.
[6] 293 U.S. 245 (1934). [7] *Time*, Aug. 12, 1940, p. 20.
[8] 303 U.S. 444, decided Mar. 28, 1938. Justice Cardozo did not participate.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

nance requiring permission of the city manager before distributing any sort of handbills or literature; no standards were set up to guide the city manager in his exercise of the permit power, and the resultant threat of unfettered power of censorship was so great as to constitute a clear violation of the freedom of press and religion guaranteed by the Fourteenth Amendment.[9] More complicated in its requirements, but equally unconstitutional, was the ordinance held invalid in Schneider v. State (Town of Irvington, New Jersey), in which permission to canvass or solicit from house to house was made dependent upon filing with the chief of police numerous data as to the applicant's physical characteristics and purposes; the chief of police could refuse the permit if, on investigation made at his discretion, he was not satisfied that the canvasser was of good character and free from fraud.[10] Miss Schneider was a member of Jehovah's Witnesses who had canvassed without permit, for which she was convicted; she lost in successive appeals until she reached the Supreme Court, where Justice Roberts, on behalf of a seven-man majority, declared the ordinance unconstitutional since the police chief was given censorial powers to determine what literature might be distributed and the "ability to communicate with the residents of the town at their homes depends upon the exercise of the officer's discretion." Though there was danger of fraud, trespass, and disturbing the public through soliciting at odd hours, the Court was of the opinion that these matters could be adequately handled without resort to censorship.

In May, 1940, Justice Roberts again spoke for the Court, which unanimously declared unconstitutional a Connecticut law forbidding anyone to solicit for charitable causes without previously satisfying the secretary of the public welfare council that the cause involved was a *bona fide* charitable or religious one;[11] this was held to

[9] In coming to its decision, the Court relied upon Gitlow v. New York, 268 U.S. 652 (1925); Near v. Minnesota, 283 U.S. 697 (1931); Grosjean v. American Press Co., 297 U.S. 233 (1936); and DeJonge v. Oregon, 299 U.S. 353 (1937).

[10] 308 U.S. 147, decided Nov. 22, 1939. The vote was seven to one. Justice Butler had died only six days before, and Justice McReynolds dissented without opinion.

[11] Cantwell v. Connecticut, 310 U.S. 296, decided May 20, 1940. A second charge against the Cantwells was the common law offense of inciting to breach of the peace. This conviction was summarily disposed of by the Supreme Court on the ground that testimony disclosed angry words spoken by and to the Cantwells, but no actual breach of the peace. Furthermore, said the Court, this conviction rested only on " . . . a common law concept of the most general and undefined nature, . . . " and the facts did not show any " . . . clear and present danger of riot, disorder, . . . or other immediate threat to public safety, peace, or order."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

be a direct violation of the Fourteenth Amendment guarantees of freedom of speech and religion. The aggressive tactics of the Witnesses were well demonstrated here, in that the Cantwells (a father and two sons) picked out a neighborhood in New Haven which was ninety per cent Roman Catholic and went from house to house distributing literature, soliciting contributions, and playing a phonograph record which was a particularly virulent attack upon the Roman Catholic Church. Under the circumstances, it seems more than a little remarkable that there was no actual breach of the peace.

Up to this point, it appeared that the Witnesses had little to worry about in the matter of federal interference. But on June 3, 1940, Justice Frankfurter handed down the now famous decision in the flag-salute case of Minersville School District v. Gobitis.[12] Here the local board of education, acting under a permissive state law, had decreed a daily flag salute, and the two Gobitis children, members of a Witness family, refused to salute. They were therefore barred from public school and, because of the state compulsory education law, their father was under the financially burdensome necessity of sending them to a private school. He therefore sought to enjoin the authorities from enforcing the salute requirement. Justice Frankfurter stated that "conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs," and secondly that "we live by symbols," and if the state legislature was of opinion that unity would be promoted by the salute, it was entitled to the exercise of its judgment as to the means to achieve a legitimate end. The Justice seemed personally dubious as to the effectiveness of such legislation, but held that if the Court were to substitute its judgment for that of the legislature, it " . . . would in effect make us the school board for the country. That authority has not been given to this Court, nor should we assume it."[13] This was an extremely interesting statement by a member of an institution which,

[12] 310 U.S. 586. The Court split eight to one in this case. For criticism of the decision as coming close to evidencing war hysteria, see *The New Republic*, June 24, 1940, p. 843; *The Christian Century*, July 3, 1940, pp. 845–846.

[13] 310 U.S. 598. *A propos* this statement, *The Christian Century* posed the pointed editorial question: "If the legislative branch enacts laws which encroach upon the liberties of the people, whose business is it, if not that of the courts, to render the prevailing decision as to what a wise adjustment requires?" July 3, 1940, p. 845.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

on many occasions in times past, had shown scarcely a qualm about substituting its judgment for that of a state or national legislature. In any case, the Court now held that the compulsory flag salute was in effect a political issue which must be fought out in the arena of public opinion, and not before the judiciary.

Justice Stone alone dissented, in an opinion which, while not as powerful as his famous dissent in the A.A.A. case of United States v. Butler,[14] was nevertheless destined to be extremely influential. He admitted that the constitutional guarantees of personal liberty are not absolute, and that they may be infringed in the government's enforcement of its prior right to survive. Such was the case in those instances where its right to draft men was upheld,[15] its right to require military training in state universities,[16] and to suppress presumably immoral practices, even if they happened to be an adjunct of the Mormon religion.[17] "But it is a long step, and one which I am unable to take, to the position that the government may, as a supposed educational measure and as a means of disciplining the young, compel public affirmations which violate their religious conscience."[18] There are ways of teaching loyalty and patriotism, as by the study of political history and institutions, which will contribute to national unity without compelling a student to affirm that which he does not believe. The tolerance of this great judge was well demonstrated as he attacked the old problem of majority coercion of the minority and the companion-piece of the extent to which the judiciary should substitute its will for that of the legislature:

"I am not persuaded that we should refrain from passing upon the legislative judgment 'as long as the remedial channels of the democratic process remain open and unobstructed.' This seems to me no less than the surrender of the constitutional protection of the liberty of small minorities to the popular will. . . . Here we have such a small minority entertaining in good faith a religious belief which is such a departure from the usual course of human conduct that most persons are disposed to regard it with

[14] 297 U.S. 1, 78 (1936). [15] Arver v. United States, 245 U.S. 366 (1918).

[16] Hamilton v. Regents of the University of California, 293 U.S. 245 (1934).

[17] Davis v. Beason, 133 U.S. 333 (1890).

[18] 310 U.S. 602. Justice Stone further recalled the fact that a state can compel education of its citizens, but cannot prohibit parochial schools (Pierce v. Society of Sisters, 268 U.S. 510, 1925); that it can control the use of its streets, but not in such a way as to violate freedom of speech (Hague v. C.I.O., 307 U.S. 496, 1939); and that it may prohibit littering the streets with handbills, but not in such a way as to suppress the communication of ideas (Schneider v. State, 308 U.S. 147, 1939).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

little toleration or concern. In such circumstances, careful scrutiny of legislative efforts to secure conformity of belief and opinion by a compulsory affirmation of the desired belief is especially needful if civil rights are to receive any protection."

The evident feeling of Justice Stone and of many others was captured by America's foremost liberal journal of religion, and crystalized in one sentence:[19] "It is bitterly ironical that a free government should inflict a penalty for refusal to salute a symbol of freedom."

Although the point involved in the Gobitis case was very hotly debated, it seemed hard to disagree with the Court's holding in the next Witness case, that of Cox v. New Hampshire.[20] The facts here well illustrated the tactics of the Witnesses, who decided to hold a sidewalk parade in Manchester, N. H., and who not only did not bother to take out the required permit, but proceeded to parade single-file, in four or five groups of fifteen to twenty each, through the business district on a Saturday night in July, 1938; traffic counts showed that, in this city of 75,000, as many as 26,000 people an hour passed one of the intersections where the Witnesses marched. A unanimous Court, speaking through Chief Justice Hughes, gave the Witnesses short shrift; distinguishing previous decisions, the Court held that the requirement of a parade permit was a reasonable police regulation, and that "no interference with religious worship or the practice of religion in any proper sense is shown, but only the exercise of local control over the use of the streets for parades and processions."[21]

Another case from New Hampshire was decided about a year later, and again most people would agree that the Witnesses' contention was quite reasonably denied. In Chaplinsky v. New Hamp-

[19] *The Christian Century*, June 19, 1940, p. 791. The argument that the human mind cannot be coerced into belief, and that an enforced oath is unproductive of the desired end, is well presented, with illustrations, in the brief of the American Bar Association's Committee on the Bill of Rights, filed as *amicus curiae* in the Gobitis case. See especially pp. 40–41.

[20] 312 U.S. 569, decided Mar. 31, 1941. The Court voted eight to none, one vacancy existing because of the retirement, two months previously, of Justice McReynolds.

[21] Six weeks previously, on February 17, 1941, the First Circuit Court of Appeals had reached a similar decision in the case of City of Manchester v. Leiby, in which the Witnesses had ignored a city ordinance requiring the issuance of a revocable badge to anyone selling literature on the streets. Said the circuit court: "This reasonable police regulation, in our opinion, imposes no substantial burden upon the freedom of the press or the free exercise of religion." 117 Fed. 2d. 661, 666.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

shire,[22] the appellant maintained the unconstitutionality of a law of that state which forbade anyone to address " . . . any offensive, derisive, or annoying word to any other person who is lawfully in any street or other public place," or to " . . . call him by any offensive or derisive name." The complaint charged that Chaplinsky, in arguing with the city marshal of Rochester, N. H., on the sidewalk near the city hall, called the latter a "God-damned racketeer," and continued that he was also " . . . a damned Fascist, and the whole government of Rochester are Fascists or agents of Fascists." The decision of the unanimous Court, speaking through Justice Murphy, upheld the constitutionality of the law, and mildly added " . . . we cannot conceive that cursing a public officer is the exercise of religion in any sense of the term."[23] It was, indeed, a revealing commentary on the intellectual processes of a member of the Witnesses that he should argue that such conduct as that of which Chaplinsky was guilty could hide behind "freedom of religion."

Only three months later, on June 8, 1942, the Court handed down opinions in three cases led by Jones v. City of Opelika (Ala.) which, as it turned out, were to represent the nadir of the Witnesses' legal difficulties.[24] In all three cases, the ordinances which various Witnesses had violated and whose constitutionality they contested required peddlers of literature to take out permits and pay stated fees therefor; the fees ranged from five dollars a year to twenty-five dollars a month, but in no case was the amount of the fee the matter in controversy, since the appellants refused, as a matter of principle, to pay any fee at all. Justice Reed, speaking for himself and four others, summarily held that the permit and fee requirement was constitutional, being a simple non-discriminatory regulation which was merely incidental to any question of freedom of speech or religion. He distinguished the Gobitis case on the ground that there was no religious symbolism involved in the present one, and Lovell v. Griffin on the rather curious ground that in that case the city lacked the right to require any license at all.

Coming events cast their shadows before in the dissents which were filed in this case, for within a scant eleven months the majority was to turn to these dissents and acknowledge their correctness; they therefore warrant more than cursory examination. By

[22] 315 U.S. 568, decided Mar. 9, 1942. [23] 315 U.S. 568, 571.

[24] 316 U.S. 584. The other two cases, decided simultaneously and similarly, were Bowden et al. v. Fort Smith (Ark.) and Jobin v. Arizona.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

now, Mr. Stone was Chief Justice, and he pointedly maintained that the Opelika ordinance was bad because it, like that in Lovell v. Griffin, was revocable at will; in severe terms he indicated his belief that his colleagues' contrast between the Lovell case and the present one was a glib distinction without a difference:

"That purpose [i.e., of the First Amendment] cannot rightly be defeated by so transparent a subterfuge as the pronouncement that, while a license may not be required if its award is contingent upon the whim of an administrative officer, it may be if its retention and the enjoyment of the privilege which it purports to give is wholly contingent upon his whim. In either case, enjoyment of the freedom is dependent upon the same contingency and the censorship is as effective in one as in the other."

Indeed, he added, if anything, the Griffin permit was better, because it at least was free. Furthermore, he suggested that the amount of the fees charged might have been given at least passing consideration, as they were flat amounts, not proportioned to the amount of business done. But in any case this was secondary, because the selling of literature here was, in his opinion, a religious rather than a commercial venture, and: "The constitutional protection of the Bill of Rights is not to be evaded by classifying with business callings an activity whose sole purpose is the dissemination of ideas, and taxing it as business callings are taxed."

There was a separate dissent by Justice Murphy (joined by Justices Stone, Black, and Douglas) which did not add materially to what the Chief Justice had said, but which did provide the encouraging spectacle of a Catholic judge speaking out for the civil rights of a sect which to most people appeared intolerant and nonsensical in the extreme, and which most bitterly attacked, not only the government in which the Justice held a position of great responsibility, but the very religious belief to which he was a prominent and devout adherent. There followed one other especially noteworthy dissent, by Justices Black, Douglas and Murphy, in which there was no need for Chief Justice Stone to join, but with which he would naturally agree:

"The opinion of the Court sanctions a device which in our opinion suppresses or tends to suppress the free exercise of a religion practiced by a minority group. This is but another step in the direction which Minersville School District v. Gobitis . . . took against the same religious minority and is a logical extension of the principles upon which that decision rested. Since we joined in the opinion in the Gobitis case, we think this is

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

an appropriate occasion to state that we now believe that it was also wrongly decided. Certainly our democratic form of government functioning under the historic Bill of Rights has a high responsibility to accommodate itself to the religious views of minorities, however unpopular and unorthodox those views may be. The First Amendment does not put the right freely to exercise religion in a subordinate position. We fear, however, that the opinions in this and in the Gobitis case do exactly that."

In spite of the dissent, however, the majority opinion remained the law: a city may constitutionally require a license as a condition for the peddling of religious literature within its limits. But Lovell v. Griffin would not down. On March 8, 1943, Justices Black and Reed handed down decisions in two related cases, Jamison v. Texas and Largent v. Texas, which reverted directly to the old Lovell authority.[25] Miss Jamison was charged with violating a Dallas anti-handbill ordinance which carried a blanket prohibition against scattering handbills within the city, and was fined five dollars in the county criminal court. As this was the highest state court having cognizance of such a case, she appealed directly to the Federal Supreme Court. Evidence showed no violence of any sort, but simply quiet distribution of Witness literature. The Court briefly referred to Hague v. C.I.O., Cox v. New Hampshire, Chaplinsky v. New Hampshire, and Schneider v. State (Irvington) as authority for holding the ordinance invalid, and continued to the effect that: " . . . one who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. This right extends to the communication of ideas by handbills and literature as well as by the spoken word."[26]

It was not until later in the spring of 1943, however, that the Witnesses' cup really ran over; in a series of seven cases in May and June, the Supreme Court seemed to go over completely to the Witness camp. At the outset came a group of four cases involving another anti-handbill ordinance, requiring municipal permits to canvass and solicit; all of the decisions were announced on May 3,

[25] 318 U.S. 413 and 318 U.S. 418, respectively. Justice Rutledge did not participate in either case; otherwise in both the Court was unanimous.

[26] The result was similar in the Largent case, Justice Reed citing the Lovell, Schneider, Cantwell, and Chaplinsky cases as authority for invalidating an ordinance of Paris, Texas, requiring solicitors of orders for books or other merchandise to secure a permit from the mayor. Neither of these cases would seem to require any comment, or even notice, had it not been for the Jones v. Opelika decision.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

1943. First came a *per curiam* decision vacating the 1942 judgment in Jones v. Opelika and its companion cases, Bowden v. Ft. Smith and Jobin v. Arizona.[27] These cases had been reheard along with the argument of Murdock v. Pennsylvania (City of Jeannette),[28] and the earlier judgments were reversed for reasons stated in the Murdock opinion. That case involved an 1898 ordinance of the city of Jeannette which required payment of stated fees for a permit for any canvassing or soliciting. It seems scarcely necessary to add that various Witnesses ignored the permit requirement and went ahead and distributed books and pamphlets and played their phonograph records—wherefore they were arrested, convicted, and fined. They then appealed on the grounds of the First Amendment guarantees of freedom of speech, press, and religion, as enforced through the Fourteenth Amendment. Speaking for a five-man majority, Justice Douglas did not question the validity of a registration system, but did emphatically deny the validity of the tax. He held that the "Witness work" did not become commercial rather than religious simply because the books involved were sold (or given away while accepting a reciprocal "contribution") instead of donated. He then proceeded:

"Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way. . . . The tax imposed by the City of Jeannette is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment. . . . A state may not impose a charge for the enjoyment of a right guaranteed by the Federal Constitution. . . . The way of the religious dissenter has long been hard. But if the formula of this type of ordinance is approved, a new device for the suppression of religious minorities will have been found . . . the fact that the ordinance is 'nondiscriminatory' is immaterial. The judgment in Jones v. Opelika has this day been vacated . . . [The Supreme Court is] freed from that controlling precedent."

From the foregoing holding, Justices Reed, Frankfurter, Roberts, and Jackson dissented on the ground that the tax involved was a reasonable, non-discriminatory one and that nothing in the decisions of the Supreme Court freed churches from the financial burdens of government; they furthermore denied that these "sales" of religious books were solely religious transactions.

[27] 319 U.S. 103. Rehearing had been granted in Mar., 1943.
[28] 319 U.S. 105.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The third decision on May 3, 1943, was in the case of Martin v. City of Struthers (Ohio),[29] involving a city ordinance which forbade persons to knock on doors or ring doorbells to summon the occupants of the house to the door so as to distribute handbills. Justice Black, speaking for the same colleagues who constituted the majority in the Murdock case, plus Justice Frankfurter, held this ordinance to be an invalid denial of freedom of speech and press as applied to a person distributing advertisements for a religious meeting. He recognized the evils of canvassing, but also stated that: " . . . door to door distribution of circulars is essential to the poorly financed causes of little people. . . . Freedom to distribute information to every citizen . . . is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations . . . it must be fully preserved." Justices Reed, Roberts, and Jackson dissented on the ground that no censorship or suppression of ideas was shown.

The fourth case of May 3, 1943, was that of Douglas *et al.* v. City of Jeannette,[30] involving the same ordinance as that in the Murdock case, but an instance in which several Witnesses sought to have a federal district court enjoin the mayor of Jeannette from enforcing the ordinance. A unanimous Court, through Chief Justice Stone, held that, in view of the Murdock decision, the injunction was unnecessary. There was an extremely interesting concurring opinion by Justice Jackson (in which he was joined by Justice Frankfurter) stating his reasons for approval of the result in this case and for his dissent in Murdock and Martin.[31] There was a powerful portrayal of the other side of the medal: the personal objectionableness of the Witnesses, the inflammatory nature of their doctrines as laid down by Rutherford, and their apparent desire to cause as much disturbance as possible.

"The real question is where their [the Witnesses'] rights end and others begin. . . . Civil government cannot let any group ride rough-shod over others simply because their 'consciences' tell them to do so . . . [In Chaplinsky v. New Hampshire 'fighting words' were outlawed]. . . . How then can the Court today hold it a 'high constitutional privilege' to go to homes, including those of devout Catholics on Palm Sunday morning, and thrust upon them literature calling their church a 'whore' and their faith a 'racket'?

[29] 319 U.S. 141. The Court divided six to three.
[30] 319 U.S. 157. Chief Justice Stone delivered the opinion.
[31] Cf. 319 U.S. 166–182.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

This Court is forever adding new stories to the temples of constitutional law, and the temples have a way of collapsing when one story too many is added. So it was with liberty of contract, which was discredited by being overdone. The Court is adding a new privilege to over-ride the rights of others to what has before been regarded as religious liberty. In so doing it needlessly creates a risk of discrediting a wise provision in our Constitution which protects all . . . in the peaceful, orderly practice of the religion of their choice, but which gives no right to force it upon others."

A few weeks later, on June 14, 1943, the Court handed down three more decisions which made a clean sweep for the Witnesses. By all means the most important of the three was West Virginia State Board of Education v. Barnette.[32] Ironically enough, this case arose out of a regulation adopted (under permissive state law) by the West Virginia Board of Education on the direct authority of the Minersville v. Gobitis decision; yet the child was to overrule the parent. The West Virginia board, on January 9, 1942, required all students and teachers to salute and pledge allegiance to the flag as a regular part of the public school program; its resolution mouthed the old phrases about the freedom of religion, and paraphrased the Gobitis opinion as to the flag being the symbol of unity and national power, and unity being the basis of national security. Refusal to salute was declared "insubordination," and was made punishable by expulsion. There could be no readmission without compliance, and while the child was thus "unlawfully absent" from school, and therefore "delinquent," his parents were subject to a fifty-dollar fine and thirty days in jail. Witnesses, of course, refused to comply with the requirements, although they offered to take an alternative oath of allegiance " . . . to Jehovah, the Almighty God . . . " to which would be added a statement of "respect" for the flag and of further allegiance " . . . to all the laws of the United States that are consistent with God's law, as set forth in the Bible." The state understandably refused to accept so uncertain an alternative as was this in its latter part, and the dispute was deadlocked. Then the Witnesses sought U. S. district court action to enjoin enforcement of the law as in violation of the due process and equal protection clauses of the Fourteenth Amendment; the district court acquiesced, and the case went on appeal to the Supreme Court.

[32] 319 U.S. 624.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

On behalf of five colleagues and himself, Justice Jackson overruled the Gobitis decision and held the West Virginia regulations unconstitutional. The gist of the Court's opinion is contained in its statement that:

"It is now a commonplace that censorship or suppression of expression of opinion is tolerated by our constitution only when the expression presents a clear and present danger of action of a kind the State is empowered to prevent and punish.
". . . freedom of speech, of press, of assembly, and of worship may not be infringed on . . . slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect."

The history of coerced uniformity is long, and:

"Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard. It seems trite but necessary to say that the first Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. . . . We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority."

Going farther, the Court referred to the fact that Congress, by recent legislation, was dealing much more leniently with religious dissenters than did these local regulations. For one thing, it recognized the legality of conscientious objections to the draft, and by section seven of H.J.R. 359, approved December 22, 1942, it liberalized the oath and salute to the flag by permitting civilians to show respect for it by simply standing at attention, with men removing their hats.[33] Not only that, but Justice Jackson went ahead with a comment obviously inspired by Justice Frankfurter's quotable statement in the Gobitis opinion: whether action like that at hand did or did not make the Court a school board for the country was immaterial. The Court was here performing a judicial, not an educational, duty. To the idea that such laws as these should be corrected, if wrong, solely by legislative action, he countered:

"The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free

[33] 56 Stat. 1074; 36 U.S.C. (1942 Supp.), sec. 172.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

Justices Black and Douglas concurred, explaining that they had held as they did in the Gobitis case because they did not want the federal constitution to be a rigid bar to state regulation of conduct, but " . . . long reflection convinced us that although the principle is sound, its application in the particular case was wrong." Justice Murphy concurred separately, adding: "Reflection has convinced me that as a judge I have no loftier duty or responsibility than to uphold that spiritual freedom to its farthest reaches." Thus the Black-Douglas-Murphy group gave the Witnesses a Court majority, as had been foreshadowed by their dissent in the first Jones v. Opelika decision.

Justice Frankfurter dissented, saying that he, as a member of a long-suppressed racial minority, personally favored the libertarian views of the majority, but that as a judge he felt bound to uphold the state's power. He thought the majority's interpretations went too far, and said: "The constitutional protection of religious freedom terminated disabilities, it did not create new privileges. It gave religious equality, not civil immunity. Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma."

Although this was the high mark of the day from the Witnesses' point of view, two other cases were decided also. One was a *per curiam* decision (Justice Rutledge abstaining) in Busey v. District of Columbia,[34] in which the Court held that in view of the second Jones v. Opelika and the Murdock v. Pennsylvania decisions, it must vacate a decision of the District of Columbia Court of Appeals which had upheld the conviction of certain members of the sect who had violated a District law by selling their magazines on the streets without first getting a license and paying the required fee. The other case also followed necessarily from the Murdock and Barnette opinions: Taylor v. Mississippi.[35] Here was involved the constitutionality of a 1942 Mississippi law decreeing the imprisonment, until the conclusion of a treaty of peace[36] by the United States, of anyone found guilty of orally, by phonograph, or by distribution of

[34] 319 U.S. 579. [35] 319 U.S. 583.

[36] The Mississippi legislature inserted the militarily pessimistic proviso that imprisonment should not in any case exceed ten years.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

literature encouraging violence, sabotage, or disloyalty to the state or the United States, giving away military secrets, inciting racial prejudices, or tending to create an attitude of refusal to salute, honor, or respect the flag or government of the state or of the United States. The appellants, whose conviction for violating the above act was affirmed by the state supreme court, appealed to the federal court on the grounds that the law was unconstitutional under the First and Fourteenth Amendments and that it was so vague as to provide no reasonably ascertainable standard of guilt. Evidence showed that the appellant, Taylor, had told some women (sons of two of whom had been killed in action overseas) that sending troops abroad was wrong, that the deaths were in vain, and that people should not salute the flag. A unanimous Court, represented by Justice Roberts, set aside the convictions on the ground that the appellants were not shown to have advocated subversive action, to have done anything with evil or sinister purpose, or to have threatened any clear and present danger to American institutions. Furthermore, in view of the Barnette invalidation of the school-flag salute, the Court set aside that part of the law which forbade interference with saluting.

Only two cases remain to be considered briefly. The first was Prince v. Massachusetts. It upheld a Massachusetts child-labor law which forbade anyone to furnish a boy under twelve or a girl under eighteen with papers, magazines, or other merchandise to sell on the street.[37] One Sarah Prince was convicted under the act, evidence showing that she furnished a nine-year-old girl to whom she was aunt and guardian with Witness magazines to be sold on the streets at night. Both she and the nine-year-old claimed to be ordained ministers of Jehovah's Witnesses, and consequently she maintained that the law was an invalid restriction of freedom of religion; there was no mention of freedom of the press. It did not take the five-man majority of the Court, speaking through Justice Rutledge, long to uphold the law as a valid exercise of police power because of the state's position as *parens patriae* and its corresponding responsibility with regard to children and their health. Justice Jackson (joined by Justices Roberts and Frankfurter) entered a forceful dissent in which he maintained that this decision was inconsistent with that in Murdock, and that:[38]

[37] 321 U.S. 158, decided Jan. 31, 1944.

[38] 321 U.S. 158, 177–178. Justice Murphy entered a separate dissent.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"This case brings to the surface the real basis of disagreement among members of this Court in previous Jehovah's Witnesses cases. . . . Our basic difference seems to be as to the method of establishing limitations which of necessity bound religious freedom. My own view may be shortly put: I think the limits begin to operate whenever activities begin to affect or collide with liberties of others or of the public. Religious activities which concern only members of the faith are and ought to be free—as nearly absolutely free as anything can be. . . . [But when churches engage in such secular activities as dinners, entertainments, lotteries, etc, these things are] Caesar's affairs and may be regulated by the state, so long as it does not discriminate against any one because he is doing them for a religious purpose, and the regulation is not arbitrary and capricious, in violation of other provisions of the constitution."

The final case for consideration is that of Follett v. Town of McCormick (S. C.).[39] The Court split six to three, with the majority using Justice Douglas as its spokesman to hold unconstitutional the McCormick ordinance imposing a license fee of one dollar a day or fifteen dollars a year on book-selling agents. The South Carolina supreme court had distinguished the second Jones v. Opelika decision on the grounds that (1) Follett was a resident of McCormick, not a transient as in the other instances, and (2) he earned his entire living by selling books, so that this was not, contrary to the earlier cases, a matter of a simple spare-time religious service. Nevertheless this did not sway the federal Supreme Court, for: "Freedom of religion is not merely reserved for those with a long purse. Preachers of the more orthodox faiths are not engaged in commercial undertakings because they are dependent on their calling for a living." In the majority's opinion, the flat license tax here involved was no less odious than the early "taxes on knowledge" which the First Amendment was designed to outlaw.[40]

Again there was dissent by Justices Roberts, Frankfurter, and Jackson, who contended, as before, that the tax was non-discriminatory and did not lay any onerous burdens. Further, they raised the question as to where the principle laid down by the majority would end: would it not lead to the exemption of New York's Trinity Church from taxation on all its commercial properties? Ought not a similar exemption to be given to the press and to those who speak? But as far as Justice Douglas was concerned, this was a matter of borrowing trouble, and could be settled later.

[39] 321 U.S. 573, decided Mar. 27, 1944.
[40] Citing Grosjean v. American Press Co., 297 U.S. 233, 245–248.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

III

At least two matters arise for consideration out of a general view of the preceding cases: (1) the constitutional law covering a given subject, as a case study in reconciling conflicting public and private rights, and (2) the attitudes of individual judges, as a study in the personalities composing our most august judicial institution.

So far as concerns the law as it now stands, it is clear that it is unconstitutional for a state or city to require students in its schools to give a specified salute and pledge of allegiance to the national flag and government if the students have religious scruples against those acts. And a city may not levy a tax as a condition precedent to the granting of a permit to canvass or solicit in a religious cause, or to sell or donate religious publications. There are many who, with an eye on the aggressive and at times anti-social attitudes and tactics of Jehovah's Witnesses, will consider that the Court in its most recent decisions has gone too far and leaned over backward in its solicitude for the tender religious sensitivities and constitutional rights of a group which customarily shows little concern for the correlative rights of others. It hardly seems unfair to suggest that the Witnesses, who demand so much tolerance and coöperation from the public, might practice a little tolerance and coöperation themselves. It is here submitted that the Witnesses, at least since 1943, have had no just cause for complaint against the treatment they have received at the hands of the judicial branch of the federal government, and that the position taken by Justice Jackson in his dissents in Douglas v. Jeannette and Prince v. Massachusetts merits extremely careful study as quite possibly the right one. It is not impossible that the Court, in an altogether laudable desire to protect the constitutional rights of a minority—an attitude which liberal democrats will criticize only with great reluctance—may actually have leaned too far in the direction of protecting the religious fanatic who maintains that the one way in which he can worship the deity of his choice is by spreading his prayer rug in the middle of a busy street intersection, and who therefore demands that all traffic be routed around him. In actual fact, the Witnesses are not large enough a sect to cause any great disturbance one way or the other. But the principle is of basic importance, far outweighing the significance of the people who evoke its application.

It is now proposed to consider the attitudes of individual judges

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in an attempt to determine whether there were any constant alignments of votes on the bench in the cases under consideration. To do this, it seems advisable to eliminate from consideration the *per curiam* decisions (Leoles v. Landers, the second Jones v. Opelika, and Busey v. District of Columbia), and also Douglas v. Jeannette, because its decision depended solely on that in Murdock. Fourteen justices participated in one or more of the remaining fifteen cases. Table I presents their positions "for" or "against" the contentions made by the Witnesses in those cases:

TABLE I

Justice	*For*	*Against*	*Justice*	*For*	*Against*
Black	11	4	Jackson	5	5
Brandeis	1	0	McReynolds	2	3
Butler	1	0	Murphy	10	3
Byrnes	0	2	Reed	7	8
Douglas	10	4	Roberts	7	8
Frankfurter	6	8	Rutledge	5	1
Hughes	3	2	Stone	12	3

From the above, certain fairly well-defined *blocs* become apparent. For the Witnesses were Justices Stone, Black, Murphy, Douglas, and probably Rutledge, although he was appointed too late to participate in about half of the cases. Opposing these were Justices Roberts, Reed, and Frankfurter. Justice Jackson joined neither camp, a situation not surprising in view of his expressed opinions as noted in the preceding pages.[41] From Table I, it is also apparent that at least five names need not be further considered: Justices Brandeis, Butler, Byrnes, Hughes, and McReynolds. None of these men passed on more than five cases, and each of them is now off the bench. Although Justices Stone and Roberts are no longer on the bench, each participated in the full fifteen cases; hence their names are left in.

It will be well to narrow down somewhat the field of search for Court alignments by considering those cases properly to be labelled as "controversial." These, by definition, include all cases reviewed

[41] Lest the author be accused of being unduly influenced by baseball techniques, let him state here his realization that a box score does not in all cases indicate which team is better, nor certainly does it show up subtle mutations of thought and opinion within a court. But it is useful for the purposes of such a survey-analysis as is here attempted.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

herein, except (1) *per curiam* cases, (2) Douglas v. Jeannette, in which the holding (denial of prayer for injunction) was ostensibly against the Witnesses, but which was based on the fact that the Witnesses no longer needed the injunction since they had won their ends in Murdock, and (3) the Cox, Chaplinsky and Prince cases—these latter being rather arbitrarily excluded because of the fairly obvious propriety of the exercise of the police power which the Witnesses contested therein. The vote of a judge in one of these latter would, it appears, have been very little swayed by his pro- or anti-Witness feelings. The tabulation in "controversial" cases follows:

TABLE II

Justice	*For*	*Against*	*Justice*	*For*	*Against*
Black	11	1	Reed	7	5
Douglas	10	1	Roberts	6	6
Frankfurter	5	6	Rutledge	5	0
Jackson	4	4	Stone	12	0
Murphy	9	1			

In some respects, this table simply confirms the first: e.g., Justice Jackson is still impartially poised between the contending forces, and Justices Black, Douglas, Murphy, Rutledge, and Stone are the Witnesses' best friends. Indeed, as regards the Black-Douglas-Murphy *bloc*, it may be in one sense regarded as even more solid than Table II indicates, because the one occasion on which all of the three voted against the Witnesses was in the Gobitis case, which in the first Jones v. Opelika they conceded to have been an error of judgment on their part. A further comparison of the two tables brings out the significant fact that, among the "anti" justices shown in Table I, Justice Reed ought apparently to be removed from the list, Roberts placed in the neutral ground, and Frankfurter left as the one judge who had voted against the Witnesses more times than otherwise.

To restrict still further the field of discussion, it appears that four "highly controversial" cases really are the leading ones: Gobitis, the first Jones, Murdock, and Barnette. In these, the Court first held that the flag salute and permit ordinances were constitutional, and then reversed itself and declared them unconstitutional. These, then, provide the *pièce de resistance*, and the Witnesses' fortunes

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

rose or fell according as they were decided. Table III analyzes the vote in these four:

TABLE III

Justice	*Gobitis*		*Jones I*		*Murdock*		*Barnette*		*Total*	
	Pro	*Con*	*Pro*	*Con*	*Pro*	*Con*	*Pro*	*Con*	*Pro*	*Con*
Black		1	1		1		1		3	1
Douglas		1	1		1		1		3	1
Frankfurter		1		1		1		1	0	4
Jackson				1		1	1		1	2
Murphy		1	1		1		1		3	1
Reed		1		1		1		1	0	4
Roberts		1		1		1		1	0	4
Rutledge					1		1		2	0
Stone	1		1		1		1		4	0

This brings out again the same sort of alignment as Table I: Justices Stone, Black, Douglas, Murphy, and Rutledge were fairly consistently for the Witnesses; Justice Jackson was in the middle, but leaning slightly toward the anti-Witness group; and Justices Frankfurter, Reed, and Roberts were found invariably voting against the Witnesses. To the extent, then, to which figures on such a small number of cases permit the drawing of valid conclusions, it appears that a "reading from left to right" picture may be visualized. Defining the left as being that point of view which is inclined to grant the demands of the Witnesses, and the right as that which tends to deny these demands, the following is the sequence: Justice Stone is on the extreme left, from which point the gradation moves through the Black-Douglas-Murphy group, through Jackson in the approximate center to Reed and Roberts, and finally to Justice Frankfurter on the extreme right.

Another question naturally comes to mind: Why did the Court suddenly reverse itself and overrule the Gobitis and first Jones decisions? Was it change of personnel, or change of individual mind? As far as the flag salute is concerned, this cannot be answered conclusively, because both factors were involved. To the minority of one consisting of Justice Stone in the Gobitis case was added a solid five-man group in Barnette. Three of the five—Justices Black, Douglas, and Murphy—publicly confessed to a change of mind; while the other two—Justices Jackson and Rutledge—were new appointees. It is clear that neither of these groups alone, voting

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

with Chief Justice Stone, would have been numerically sufficient to change the Court's collective mind, and the question as to the reason for the change of the Court as a whole can consequently be given no one categorical answer.

In the case of the ordinances concerning peddling and soliciting, however, it is clear that the Murdock reversal of the first Jones holding was due to the sole factor of personnel change, namely, the seating of Justice Rutledge in place of Justice Byrnes. In the first Jones case, the pro-Witness minority consisted of Stone, Murphy, Black, and Douglas. Between then and May, 1943, when Murdock was decided, Justice Rutledge replaced Justice Byrnes and joined the above-named four to change a four-to-five minority into a five-to-four majority. Otherwise, the alignment remained the same as in the earlier case.

No one who has dabbled in the great American game of predicting Supreme Court actions can be regarded as ready for promotion to sophomore standing unless he shows appreciation of the great number of variables involved and the consequent likelihood of error on his part. He who would state categorically that the Witnesses will win their next several cases demonstrates the superficiality of his study of constitutional history, even though the sect has recently found a very sympathetic hearing in the marble temple on Capitol Hill. The Court's personnel has already changed since the last decision covered in this article, and it would be foolhardy to attempt a forecast of future changes of legal thinking and social philosophy. But study of a sequence of cases need not culminate in crystal-gazing. It may prove something far more important than the Court's application of certain laws to certain facts: it may show again the Court's devotion to the protection of minority rights, even those of an often bigoted and unpopular minority. Even if all agreed, which they obviously will not, that the tribunal may recently have been a bit too solicitous about Witness rights, there are few who would not prefer that situation to the alternative of seeing a majority disregard them completely. We may begrudge an extra trip to the front door to receive a Witness handbill, but the effort is small enough price to pay for the assurance of living in a community where diversity of thought is still tolerated. However imperfectly we may in the past have practiced it, we still pay homage to the American tradition of religious freedom.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

CONSTITUTIONAL LAW IN 1945-46

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1945

ROBERT E. CUSHMAN
Cornell University

Chief Justice Harlan F. Stone died on April 22. He was appointed Associate Justice by President Coolidge in 1925, and was elevated to the Chief Justiceship by President Roosevelt upon the retirement of Chief Justice Hughes in 1941. On June 7, President Truman nominated Fred M. Vinson, then Secretary of the Treasury, to be Chief Justice of the United States, and the Senate confirmed the nomination on June 20. Mr. Justice James C. McReynolds, who retired from the Court in 1941, died on August 24, 1945. Mr. Justice Jackson, who in May, 1945, had been appointed chief American prosecutor at the trial of Axis war criminals at Nuremberg, did not return to the Court during the 1945 term. On June 10, Mr. Justice Jackson, in Nuremberg, released to the press a statement sharply criticizing Mr. Justice Black for his failure to disqualify himself in Jewell Ridge Coal Corp. v. Local No. 6167, U.M.W.[1] This case, which awarded coal miners "portal-to-portal" pay under the Fair Labor Standards Act, was decided by a five-to-four vote, and Mr. Justice Black's former law partner was attorney for the union. The statement, unprecedented in judicial history, made public record of a personal antagonism between the two justices, and elicited nation-wide press comment. Mr. Justice Black made no reply, and there have been no later repercussions of the incident.

A court of eight justices decided twenty-three cases in which three justices dissented, and twenty-one cases in which two dissented. The Court overruled one earlier decision. This brings the list of overruled cases since 1937 to twenty-seven.

A. QUESTIONS OF NATIONAL POWER

1. CASES ARISING FROM THE WAR

Martial Rule in Hawaii. Martial rule was established in the Territory of Hawaii on the day of the attack on Pearl Harbor, and was continued until ended by Presidential proclamation in October, 1944. It was held by the Supreme Court to have been invalid in Duncan v. Kahanamoku[2] (with which was combined White v. Steer) in February, 1946. The martial rule thus established was absolute. The military authorities actually took over

[1] 325 U.S. 161, 1945. [2] 327 U.S. 304, 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the government of Hawaii in its entirety. The writ of habeas corpus was suspended, the Commanding General announced that he had "assumed the office of military governor of Hawaii," subsequent legislative acts took the form of General Orders, civil and criminal courts were forbidden to open and were replaced by military commissions and provost courts. As time went on, these restrictions were relaxed in minor ways. Civilian courts, as "agents of the Military Governor," were allowed to handle certain types of civil cases, but were not permitted to summon either grand or trial juries, or to exercise criminal jurisdiction. White, a stockbroker having no connection with the armed forces, was charged with embezzling stock belonging to another civilian. He was arrested in August, 1942, tried by a provost court without a jury, and sentenced to five years' imprisonment. Duncan, a civilian shipfitter employed at the Navy Yard at Honolulu, was arrested in February, 1944, for assault committed in the course of a brawl with two Marine sentries at the yard. By this time, the civil courts of the Territory were again handling ordinary criminal cases, but military courts still retained jurisdiction to try "criminal prosecutions for violations of military orders." Duncan was charged with violating one of these orders and was tried by a military court, although assault is a crime under the territorial law. White and Duncan sought release through writs of habeas corpus issued by the district court. The military authorities denied the court's right to issue habeas corpus. The district court held that there was no military necessity for the trial of the prisoners by military tribunals, that the trials were therefore void, and that the prisoners should be released. The Circuit Court of Appeals reversed this decision, and the Supreme Court granted certiorari.

In an opinion by Mr. Justice Black, the Supreme Court held the military trials invalid and ordered the prisoners released. Martial law in Hawaii had been established under the authority of Section 67 of the Hawaiian Organic Act of 1900 which empowered the territorial governor "in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it," to suspend the writ of habeas corpus, or place the Territory "under martial law." The issue is, "Did the Organic Act during the period of martial law give the armed forces power to supplant all civilian laws and to substitute military for judicial trials under the conditions that existed in Hawaii at the time these petitioners were tried?" The Court found that the language of the Organic Act "fails to define adequately the scope of the power given to the military and to show whether the Organic Act provides that courts of law be supplanted by military tribunals." Nor does the legislative history of the Organic Act answer the question. It does show, however, "that Congress did not intend the Constitution to have a limited application to Hawaii," and therefore "whatever power the Organic Act gave the Hawaiian military authorities,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

such power must . . . be construed in the same way as a grant of power to troops stationed in any one of the states."

The Court held, therefore, that the nature and degree of military power in Hawaii must be measured by "the principles and practices developed during the birth and growth of our political institutions." A brief review of the history of civil-military relations justifies the conclusion that national policy has been opposed to the supplanting of civil courts by military tribunals. In the only case in which the Supreme Court ever discussed the problem, *Ex parte* Milligan,[3] "it had emphatically declared that 'civil liberty and this kind of martial law cannot endure together; the antagonism is irreconcilable; and, in the conflict, one or the other must perish.' " The Court concluded, therefore, that in passing the Hawaiian Organic Act, Congress did not intend, by Section 67, to authorize the supplanting of civilian courts by military tribunals, and the implication is clear that if the statute had authorized this, it would be unconstitutional.

Mr. Justice Murphy concurred, but urged that the military trials were direct and flagrant violations of the Bill of Rights. Chief Justice Stone concurred on the ground that the military authorities had shown no reasons grounded in the public security for closing the civil courts, and that the trials of White and Duncan were, therefore, unauthorized by the Organic Act and "without lawful authority." Mr. Justice Burton, joined by Mr. Justice Frankfurter, dissented on the ground that the Court should not extend judicial control into the realm of executive and military discretion used for the protection of the public security in time of war.

Trial of Japanese War Criminals. In *In re* Yamashita,[4] the Court sustained the validity of the trial by a military commission of the Japanese General on charges of violating the law of war. After General Yamashita's surrender in September, 1945, he was held as a prisoner of war, and subsequently charged with violations of the law of war. He was tried before a military commission of five Army officers, found guilty, and sentenced to be hanged. The supreme court of the Philippines refused a writ of habeas corpus, and the Supreme Court of the United States, after argument on the merits, did likewise. Chief Justice Stone's opinion disposes of the four attacks made upon the jurisdiction and procedure of the military commission. First, the order creating the commission was issued in strict conformity to the act of Congress "sanctioning the creation of such tribunals for the trial of offences against the law of war committed by enemy combatants." The authority to create such military tribunals is not automatically terminated by the end of hostilities, but continues at least until the formal state of war has been ended by action of the political branch of the government. Second, the charges against the General correctly stated a violation of the law of war. He was charged with failing to "control the

[3] 4 Wall. 2, 1866. [4] 327 U.S. 1, 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

operations of the members of his command, permitting them to commit brutal atrocities and other high crimes. . . . " The law of war imposes a positive duty on commanders to take such measures as are in their power to protect prisoners of war and the civilian population. General Yamashita was properly charged with a breach of this duty. Third, the military commission admitted heresay and opinion evidence as well as depositions against the accused. In the trial of an enemy combatant, this is entirely proper. No act of Congress or treaty dictates the procedure which must be followed in such trials. Control over such procedure lies with the military command. "We hold that the commission's rulings on evidence and on the mode of conducting these proceedings against petitioner are not reviewable by the Courts, but only by the reviewing military authorities. From this viewpoint it is unnecessary to consider what, in other situations, the Fifth Amendment might require. . . . " Fourth, Article 60 of the Geneva Convention of 1929 requires that when a prisoner of war is put on trial, the "protecting power" must be at once notified. Switzerland was the power designated by Japan for the protection of Japanese prisoners of war held by the United States. Switzerland was not given notice of Yamashita's trial. The Court held that Article 60 applies only to persons brought to trial for offenses committed while prisoners of war.

Justices Murphy and Rutledge filed long and eloquent dissenting opinions. Their principal attack was upon the Court's refusal to apply the test of due process of law to the military commission's procedure. Mr. Justice Murphy said: "No military necessity or other emergency demanded the suspension of the safeguards of due process. Yet petitioner was rushed to trial upon an improper charge, given insufficient time to prepare an adequate defense, deprived of the benefits of some of the most elementary rules of evidence, and summarily sentenced to be hanged . . . such a procedure is unworthy of the traditions of our people."

The case of *In re* Homma,[5] the Japanese General in command at the time of the "march from Bataan," the same issues were raised as in Yamashita's case. The Court sustained the validity of the military trial without writing an opinion. Again Justices Murphy and Rutledge protested against the denial of procedural due process. Mr. Justice Murphy observed: "Today the lives of Yamashita and Homma, leaders of enemy forces vanquished on the field of battle, are taken without regard to due process of law. There will be few to protest. But tomorrow the precedent here established can be turned against others. A procession of judicial lynchings without due process of law may now follow. No one can foresee the end of this failure of objective thinking and of adherence to our high hopes of a new world . . . a nation must not perish because, in the natural

[5] 327 U.S. 759, 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

frenzy of the aftermath of war, it abandoned its central theme of the dignity of the human personality and due process of law."

Draft Act Cases. In Falbo v. United States,[6] the Court had denied to a Jehovah's Witness the right to judicial review of the correctness of his classification under the Selective Service Act on the ground that he had failed to exhaust his administrative remedies by submitting to induction. In Estep v. United States,[7] a draft registrant, also a Jehovah's Witness, while protesting his classification, presented himself for induction and then refused to submit to it. He was tried and convicted of violating the statute, but was not allowed in his defense to attack the correctness of his classification by the local board, or to introduce proof that he was in fact a minister of religion. The Court, speaking through Mr. Justice Douglas, granted a new trial. It declined to construe the statute as making final the findings of the local boards on the classification of registrants. To do so would permit them to determine finally their own jurisdiction under the act, and even to exceed it. The Court plainly implied that if the statute did preclude judicial review of the correctness of the board's findings, it would deny due process of law.

The measure of a veteran's right to reëmployment, as defined by the Selective Service Act, was brought before the Court in a suit for a declaratory judgment in Fishgold v. Sullivan Drydock & Repair Corp.[8] Fishgold was reëmployed by the company after his discharge from the Army. After some months, slackened work at the shipyard required the laying off of men. Under a collective bargaining agreement between the company and its men, layoffs were to be governed by seniority, those having higher seniority to be retained longest. Fishgold was laid off, although non-veterans having higher shop seniority were kept. The Court, in an opinion by Mr. Justice Douglas, held that this did not violate the statute. The act forbids the discharge of a returned veteran within a year, but a "person who has been laid off . . . would hardly be considered as having been 'discharged'." Furthermore, the statute does not grant the veteran an increase in seniority over what he would have had if he had never entered the armed services. It merely protects him against loss of ground or demotion upon his return. "There is no suggestion that Congress sought to sweep aside the seniority system. What it undertook to do was to give the veteran protection within the framework of the seniority system . . . ."

2. NATIONAL POWER AND CIVIL LIBERTIES

Bill of Attainder—The Lovett-Watson-Dodd Case. The most spectacular episode in the campaign by certain committees of Congress to "purge" the federal service of employees alleged to be disloyal or "subversive" was

[6] 320 U.S. 549, 1944. See this REVIEW, Vol. 39, p. 298.
[7] 327 U.S. 114, 1946. [8] 328 U.S. 275, 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

brought to an end by the Court's decision in United States v. Lovett.[9] In February, 1943, Mr. Dies, chairman of the House Committee on Un-American Activities, charged in the House of Representatives that thirty-nine federal employees whom he named were Communists or "fellow-travellers" as well as "irresponsible, crackpot, radical bureaucrats." He urged that Congress, then considering the annual appropriation bills, provide that no funds appropriated by the bills be used to pay the salaries of these employees. Unwilling to proceed in so summary a fashion, the House set up the so-called "Kerr Committee," a subcommittee of the Committee on Appropriations, to investigate further the loyalty of the accused men and report to the House upon their fitness to hold public office. The Kerr Committee conducted *ex parte* inquiries into the records, views, and writings of nine of the men, exonerated six of them, but reported that Robert Morse Lovett, Secretary of the Virgin Islands, and Goodwin B. Watson and William E. Dodd, Jr., both on the staff of the Federal Communications Commission, were found guilty of "subversive activity" and were "unfit" to continue in government service. The administrative superiors of the three employees staunchly defended them and refused to dismiss them. The House thereupon passed a rider to the Urgent Deficiency Appropriation Bill for 1943 providing that no salary or compensation should be paid to Lovett, Watson, or Dodd out of any monies then or thereafter appropriated, except for services as jurors or members of the armed services, unless prior to November 15, 1943, the President with the advice and consent of the Senate again appointed them to positions in the government. The Senate rejected the rider five times by overwhelming majorities, but finally felt compelled to agree. In signing the bill, President Roosevelt stated that he would have vetoed the rider had it been possible to do so, since he regarded it as unconstitutional.

The three men remained at work for varying periods of time at their respective jobs after November 15, but received no salary after that date. They sued in the Court of Claims to recover pay for this post-November 15 work on the ground that the rider depriving them of salary was unconstitutional. The Attorney-General declined to represent Congress in this controversy, and Congress was obliged to employ outside counsel to defend the suit. The Department of Justice filed a brief attacking the constitutionality of the congressional rider. The Court of Claims gave the three men judgment on the narrow ground that the legislative rider did not terminate their employment, but merely forbade their compensation out of funds generally appropriated, and that therefore their continued employment was valid and that they could secure payment for it from funds allocated to the satisfaction of judgments allowed by the Court of Claims. Two members of the Court held the rider unconstitutional. In the

[9] 328 U.S. 303, 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Supreme Court, it was urged on behalf of Congress that the rider was passed in exercise of the delegated power of Congress over appropriations, which is plenary and not subject to judicial review. On this assumption, the issue of the constitutionality of the rider is not a justiciable controversy. It was also argued that the rider did not purport to terminate the employment of the three men, but merely cut off their pay, and therefore could not be regarded as a punitive measure or as a usurpation of the executive power of removal. On behalf of Lovett, Watson, and Dodd, it was argued that the rider was a bill of attainder and an ex post facto law, and was a legislative usurpation of executive power, and, by discriminating against these three men, deprived them of liberty and property without due process of law.

The opinion of Mr. Justice Black, holding the legislative rider invalid, covered but two points. First, the record presents a justiciable controversy. A résumé of the history of the efforts of the House of Representatives, through its various committees, to uncover "subversive activities" upon the part of federal employees and to purge the public service of such persons forces the conclusion that the rider was intended to deprive the three men mentioned by it of their employment and to bar them permanently from the federal service. It was not, therefore, a simple exercise of the power to make appropriations, but was in effect a punitive measure. As such, it presents a clearly justiciable issue. Second, the rider must be classified as a bill of attainder. From the two "test oath" cases, Cummings v. Missouri[10] and *Ex parte* Garland,[11] the Court derives the definition that "legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without judicial trial are bills of attainder prohibited by the Constitution." The legislative denial of "any opportunity to serve the Government is punishment, and of a most severe type." The Court continues: "Section 304 [the rider] thus clearly accomplishes the punishment of named individuals without a judicial trial. The fact that the punishment is inflicted through the instrumentality of an Act specifically cutting off the pay of certain named individuals found guilty of disloyalty makes it no less galling or effective than if it had been done by an Act which designated the conduct as criminal. No one would think that Congress could have passed a valid law, stating that after investigation it had found Lovett, Dodd, and Watson 'guilty' of the crime of engaging in 'subversive activities,' defined that term for the first time, and sentenced them to perpetual exclusion from any government employment. Section 304, while it does not use that language, accomplishes that result. The effect was to inflict punishment without the safeguards of a judicial trial and 'determined by no previous law or fixed rule.' The Constitution

[10] 4 Wall. 277, 1866. [11] 4 Wall. 333, 1866.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

declares that that cannot be done either by a state or by the United States."

Postal Censorship—The Esquire Case. In Hannegan v. Esquire,[12] the Court upheld an injunction restraining the Postmaster-General from enforcing an order revoking the second-class permit of *Esquire* magazine. While the decision turned on the interpretation of the postal statutes, rather than the First Amendment, it struck an important blow at arbitrary censorship. *Esquire* magazine was given a second-class permit in 1933. In 1943, it was ordered by Postmaster-General Walker to show cause why the permit should not be suspended or revoked. A hearing was had before a board designated by the Postmaster-General, and the board recommended that the permit not be revoked. At this hearing, attention was focussed on the question whether the magazine could be regarded as obscene. Numerous persons were called to express opinions upon this question, with the inconclusive results which might have been anticipated. The Postmaster-General thereupon overruled the hearing board and revoked *Esquire's* second-class permit. He did not rest this action on the ground that the magazine was obscene, and therefore unmailable. He relied rather upon the section of the Classification Act of 1879 which states the conditions under which second-class permits shall issue. The fourth of the conditions there set up reads as follows: "It [the publication] must be originated and published for the dissemination of information of a public character, or devoted to literature, science, arts, or some special industry, and having a legitimate list of subscribers" . . . . Publications "designed primarily for advertising purposes" are specifically barred from second-class privileges. The Postmaster-General interpreted this provision in the following words: "A publication to enjoy these unique mail privileges and special preferences is bound to do more than refrain from disseminating material which is obscene or bordering on the obscene. It is under a positive duty to contribute to the public good and the public welfare." The Postmaster-General is, therefore, empowered to revoke the second-class permit of *Esquire* or any other publication if, in his judgment, it does not thus contribute to the public good.

A unanimous Court vigorously rejected the Postmaster-General's interpretation of the statute. Speaking through Mr. Justice Douglas, the Court examined the legislative history of the Classification Act, and found no evidence of Congressional intention to delegate to the Postmaster-General any powers of censorship by the provision here invoked. There is nothing to support the idea "that each applicant for the second-class rate must convince the Postmaster-General that his publication positively contributes to the public good or the public welfare." The Court observes: " . . . a requirement that literature or art conform to some norm prescribed by an

[12] 237 U.S. 146, 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

official smacks of an ideology foreign to our system. The basic values implicit in the requirements of the Fourth condition can be served only by uncensored distribution of literature . . . to withdraw the second-class rate from this publication today because its contents seemed to one official not good for the public would sanction withdrawal of the second-class rate tomorrow from another periodical whose social or economic views seemed harmful to another official . . . . Congress has left the Postmaster-General with no power to prescribe standards for the literature or the art which a mailable periodical disseminates."

Naturalization of Persons Unwilling to Bear Arms. In three earlier decisions in 1929 and 1931, the Court, in each case by a five-to-four vote, denied citizenship to applicants who refused to swear that they would bear arms in defense of this country, or who put limitations dictated by conscience upon their willingness to do so. These were the cases of United States v. Schwimmer,[13] United States v. Macintosh,[14] and United States v. Bland.[15] The division in the Court had been emphasized by the persuasive dissents of Mr. Justice Holmes in the Schwimmer case, and of Chief Justice Hughes in the Macintosh case. In Girouard v. United States,[16] the Court overruled the three cases just named and admitted to citizenship a Seventh Day Adventist who declared himself unwilling to take up arms in defense of this country, but who was willing to perform any military service which was not "combatant military duty." In an opinion by Mr. Justice Douglas, the Court emphasized that the crucial issue is one of statutory construction. The statute requires an alien before admission to citizenship to declare on oath in open court that "he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same." The oath does not in terms require a promise to bear arms, and it is obvious that there are many other ways in which a citizen may support and defend our institutions than by doing so. "Refusal to bear arms in not necessarily a sign of disloyalty or a lack of attachment to our institutions. One may serve his country faithfully and devotedly, though his religious scruples make it impossible for him to shoulder a rifle." The oath required of federal officers is "in no material respect different from that prescribed for aliens under the Naturalization Act." This oath does not disqualify conscientious objectors from holding federal office, and there is no evidence that Congress intended to set a stricter standard for admission to citizenship than for officials of the government. This construction of the act is supported by the legislation of 1942 under which aliens who served honorably in the armed forces of the United States may expedite their natural-

[13] 279 U.S. 644, 1929. See this REVIEW, Vol. 24, p. 86.
[14] 283 U.S. 605, 1931. See this REVIEW, Vol. 26, p. 266.
[15] 283 U.S. 636, 1931. See this REVIEW, Vol. 26, p. 268.
[16] 328 U.S. 61, 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ization. They must take the same oath, but the statute plainly applies to non-combatants as well as combatants. The Court relied chiefly, however, upon the doctrine and the tradition of freedom of thought and freedom of religion so powerfully presented in Holmes' classic dissent in the Schwimmer case. It was unwilling to ascribe to Congress, in the absence of the most convincing evidence, a willingness to depart from the traditional protection of this freedom of thought. Chief Justice Stone, joined by Justices Reed and Frankfurter, dissented on the ground that Congress, by fifteen years of silence and inaction, must be held to have adopted and confirmed the construction placed by the Court upon the Naturalization Act in the Schwimmer and Macintosh cases. The Chief Justice had himself dissented in the Macintosh and Bland cases, but argued that since no constitutional point is involved, the rule of those cases must now be changed, if at all, by Congress and not by the Court.

Freedom of Press and the Fair Labor Standards Act. For more than ten years, the newspaper industry has been trying to persuade the Supreme Court that "freedom of the press" means "freedom of newspaper publishers," and that the First Amendment, therefore, bars any federal economic restrictions on the newspaper business. The effort has been unsuccessful. The Court has held that the First Amendment gives newspapers no immunity from the operation of the National Labor Relations Act,[17] or the Sherman Act.[18] In Oklahoma Press Publishing Co. v. Walling,[19] it is held that freedom of the press is not abridged by applying to a newspaper the provisions of the Fair Labor Standards Act. Mr. Justice Rutledge opened his opinion for the Court as follows: "Coloring almost all of petitioner's positions, as we understand them, is a primary misconception that the First Amendment knocks out any possible application of the Fair Labor Standards Act to the business of publishing and distributing newspapers." He reaches the conclusion that "The Amendment does not forbid this or other regulation which ends in no restraint upon expression or in any other evil outlawed by its terms and purposes." The newspaper had been subpoenaed to produce specified records which would disclose the applicability of the act, and whether it was being violated. This was alleged to amount to an unreasonable search and seizure under the Fourth Amendment, and compulsory self-incrimination under the Fifth Amendment. The Court found the subpoena sufficiently specific and restricted in its terms to defeat the allegation that it constituted an unreasonable search and seizure. It disposed of the self-incrimination argument by reiterating the familiar doctrine that a corporation enjoys no protection

[17] Associated Press v. N.L.R.B., 301 U.S. 103, 1937. See this REVIEW, Vol. 32, p. 282.

[18] Associated Press v. United States, 326 U.S. 1, 1945. See this REVIEW, Vol. 40, p. 243.

[19] 327 U.S. 186, 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

against self-incrimination, and that an officer of a corporation may not refuse to produce company records on the ground that they will incriminate either him or the corporation.

Federal Juries—Exclusion of Wage Earners. In Thiel v. Southern Pacific Co.,[20] the Supreme Court ordered retrial in a case in a federal district court which had been tried before a jury drawn from a panel from which wage-earners had been systematically excluded. The case involved a suit brought against the railroad by an injured passenger. The plaintiff moved to strike out the entire jury panel on the ground that it comprised "mostly business executives or those having the employer's viewpoint." As it turned out, five of the twelve jurors drawn were found to "belong more closely and intimately with the workingman and the employee class than they do with any other class." However, the undisputed evidence of the clerk of the court and the jury commissioner was that "they deliberately and intentionally excluded from the jury lists all persons who work for a daily wage." The motive for this exclusion was the protection of wage-earners from the financial sacrifice involved in serving as jurors at $4 a day when prevailing wage rates are much higher. This did not meet the Court's objection. Mr. Justice Murphy stated the Court's position as follows: "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. . . . This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political, and geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury." This, however, would not prevent a trial judge from excusing from jury duty a daily wage-earner for whom such service would mean undue financial hardship.

Unreasonable Searches and Seizures. The constitutional guarantees against unreasonable searches and seizures and compulsory self-incrimination, which have been dovetailed together ever since 1886,[21] afford less rigid protection to one whose alleged criminality lies in the area of contractual or official relations with the government than to the wholly

[20] 328 U.S. 217, 1946.

[21] Boyd v. United States, 116 U.S. 616, 1886.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

private citizen. In Zap v. United States,[22] federal agents searched the premises and records of Zap, who had contracts to do experimental work for the Navy on a cost-plus basis. He had agreed that his business records might be inspected. In the course of the search, the agents found a cancelled check which, without permission, they took, and which the government later introduced as evidence in prosecuting Zap for making a fictitious claim against the government. The Court held that the search was lawful and that evidence obtained by it could properly be introduced. Knowledge of the check was lawfully obtained. The check itself could have been lawfully demanded by the use of a search warrant. In view of this fact, the check, though unlawfully taken, could be introduced in the sound discretion of the trial court.

Davis v. United States[23] involved a conviction for unlawful possession of gasoline ration coupons. Federal agents bought gasoline of Davis without coupons and arrested him and an employee for the illegal sale. Davis protested that he had the necessary coupons. The agents demanded access to his locked records on the ground that the coupons were the property of the United States. After at first refusing, Davis reluctantly opened his records as a result of what he later alleged was coercion and threats, and what the agents described as "persuasion" and appeals to his sense of duty. The trial court found that Davis had "consented" to the search. The Supreme Court, speaking through Mr. Justice Douglas, upheld the lawfulness of the search in an opinion which emphasized that the rules governing official search for public papers or property are more liberal than those by which private papers are protected under the Fourth Amendment. Mr. Justice Frankfurter dissented in a long opinion, with an appendix, in which will be found an exhaustive review of the cases dealing with the problem of searches and seizures.

Bell v. Hood[24] arose from a suit for damages brought by Bell against an agent of the F.B.I., on the ground that he had been unlawfully imprisoned and subjected to unreasonable searches and seizures. The federal district court dismissed the suit for want of federal jurisdiction. It was argued in support of the dismissal that the complaint stated a cause of action for a common law tort which was therefore within the jurisdiction of the state courts, and that the petitioner, even if successful, could not recover damages under the Constitution and federal statutes, since neither has provided for such recovery. The Supreme Court held that the district court had jurisdiction. An opinion by Mr. Justice Black held that the action was not a simple tort action triable in a state court, but an action based on an alleged violation of the Fourth and Fifth Amendments. The rights asserted clearly arise under the Constitution, and are therefore within the

[22] 328 U.S. 624, 1946. [23] 328 U.S. 582, 1946.
[24] 327 U.S. 678, 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

reach of the federal courts. "The complaint does in fact raise serious questions, both of law and fact, which the district court can decide only after it has assumed jurisdiction over the controversy. The issue of law is whether federal courts can grant money recovery for damages said to have been suffered as a result of federal officers violating the Fourth and Fifth Amendments. That question has never been specifically decided by this Court."

3. JUDICIAL POWER—POLITICAL QUESTIONS

The Illinois Congressional District Case. In 1901, the Illinois legislature apportioned the state into 25 congressional districts, and has not since changed them. Drastic changes in population have occurred since that date, and Chicago now has 43 per cent of the state's total. The population of the congressional districts now ranges from 112,116 to 914,000. Year by year, these inequalities have grown more grotesque. Efforts to compel reapportionment by resort to the state courts have failed. Colegrove v. Green[25] started as a suit for a declaratory judgment against the state officers comprising the State Primary Certifying Board, the effect of which would be to declare the present congressional apportionment invalid and require the election of all representatives from Illinois on a state-wide ballot until the legislature passed a valid districting statute. Precedent for such a ruling is found in Smiley v. Holm,[26] in which the Court ordered representatives from Minnesota elected at large after the state's representation in Congress had been reduced from ten to nine following the census of 1930 and the state had failed to pass a valid redistricting statute. The plaintiffs also argued that the existing inequalities in the Illinois apportionment of representatives deprive them of the equal protection of the laws, and abridge their privileges as citizens of the United States by depriving them of the constitutional right to have their votes cast in a congressional election counted at their full value. The district court dismissed the suit on the authority of Wood v. Broom,[27] in which the Court refused to pass upon the validity of a gerrymander in Mississippi because Congress had omitted from the Apportionment Act of 1929 the provision (contained in all earlier acts since 1872) that congressional districts should be composed of "contiguous and compact territory, and contain as nearly as practicable an equal number of inhabitants."

A Supreme Court of seven, dividing four to three, dismissed the suit. Announcing the judgment of the Court, Mr. Justice Frankfurter declared that the case could be disposed of on the authority of Wood v. Broom. He

[25] 328 U.S. 549, 1946. See the excellent note on this case by Franklin L. Burdette in this REVIEW, Vol. 40, p. 958 (Oct., 1946).

[26] 285 U.S. 355, 1932. See this REVIEW, Vol. 27, p. 49.

[27] 287 U.S. 1, 1932. See this REVIEW, Vol. 28, p. 52.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

went further, however, and held that the issue raised is non-justiciable. It belongs to the class of controversies which are of "a peculiarly political nature and therefore not meet for judicial determination." After a lengthy analysis of the complexities, controversies, and partisan conflicts bound up in the history of legislative apportionment, with its numerous disparities and gerrymanders, he concludes: "Courts ought not to enter this political thicket. The remedy of unfairness in districting is to secure state legislatures that will apportion properly, or to invoke the ample powers of Congress." Mr. Justice Rutledge concurred. He was unwilling, for fear of upsetting Smiley v. Holm, to hold that questions regarding apportionment are non-justiciable. He supported the Court's refusal to decide the case on the ground of want of equity.

A persuasive dissenting opinion by Mr. Justice Black, joined by Justices Douglas and Murphy, supports the constitutional arguments of the plaintiffs. The Illinois apportionment of 1901 denies them the equal protection of the laws. "No one would deny that the equal protection clause would also prohibit a law that would expressly give certain citizens a half-vote and others a full vote." But under the existing apportionment certain Illinois citizens will cast a vote only one-ninth as effective as those cast by others. The Illinois act also abridges the privileges of citizens to vote for members of Congress and have their votes fairly counted. This right plainly implies that the votes cast shall be of equal weight. If Illinois had apportioned twenty-three congressmen to the state's smallest county and one to all the others, nobody would deny that the constitutional rights of the citizens had been impaired. The present apportionment is less objectionable only in degree. To call the issues here presented "political" in nature is a mere "play on words." The issues are no more "political" than those in the white primary cases in which the Court took jurisdiction. What the Court is asked to do is exactly what it did in Smiley v. Holm. The plaintiff's petition for rehearing was denied by the Court in October, and a motion for reargument before the full bench was denied in November.

4. FEDERAL-STATE RELATIONS

Federal Taxation of State-Owned Business. In New York v. United States,[28] a divided Court writing four opinions re-examined the doctrine followed in a series of cases beginning in 1905 with South Carolina v. United States,[29] which held that although the federal government might not tax the activities of a state when engaged in "its ordinary functions as a government," it could validly tax the state when it was engaged in "the carrying on of an ordinary private business." The state sale of liquor is such "an ordinary private business." New York, with forty-five other

[28] 326 U.S. 572, 1946. [29] 199 U.S. 437, 1905.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

states supporting its legal position, protested the collection by the federal government of excise taxes on the state's sale of mineral waters taken from Saratoga Springs. The state urged that such sale was "a usual, traditional and essential governmental function." The six justices upheld the federal tax, but on three different grounds. In announcing the judgment of the Court, Mr. Justice Frankfurter rejected the perhaps over-simplified distinction of the South Carolina case doctrine between "proprietary" and "governmental" state functions as determining state immunity from federal taxation. "To rest the federal taxing power on what is 'normally' conducted by private enterprise in contradiction to the 'usual' governmental functions is too shifting a basis for determining constitutional power and too entangled in expediency to serve as a dependable legal criterion." His position is summed up as follows: "So long as Congress generally taps a source of revenue by whomsoever earned and not uniquely capable of being earned only by a state, the Constitution of the United States does not forbid it merely because its incidence falls also on a state." Mr. Justice Rutledge agreed with this, but added that he thought Congress ought to make clear in each case its intention to have general federal excises fall on state activities. Mr. Justice Reed, joined by Justices Murphy and Burton, stated that the problem cannot be solved by a formula. The crucial test should be the actual or potential effect of the immunity from federal taxation of any state activity upon the revenue power of the federal government. "The effect of the immunity on the national taxing power is to be determined, not quantitatively, but by its operation and tendency in withdrawing property or activities from the reach of federal taxation. Not the extent to which a particular state engages in the activity, but the nature and extent of the activity by whomsoever performed, is the relevant consideration." Mr. Justice Douglas, joined by Justice Black, dissented in an opinion which rejects as unsound the doctrine of the South Carolina case or any other doctrine which supports the federal taxation of any state activity, no matter what its nature may be. "The major objection is that it disregards the Tenth Amendment, places the sovereign states upon the same plane as private citizens, and makes the sovereign states pay the federal government for the privilege of exercising the powers of sovereignty guaranteed them by the Constitution." Thus in a situation already complex the Court has made four theories grow where only one grew before.

O.P.A. Regulations Held Applicable to States and Counties. The Washington State Commissioner of Public Lands held an auction sale of school land (land-grant) timber. A lumber company made a bid for the timber which was higher than the O.P.A. ceiling price. The federal Price Administrator sought an injunction restraining the completion of the sale at the bid price. The state defended the action on the ground that the Emer-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

gency Price Control Act was not intended by Congress to apply to the states, and that if it did so apply, it violated the Fifth and Tenth Amendments. In Case v. Bowles,[30] the Court, in an opinion by Mr. Justice Black, sustained the injunction. Congress plainly intended the statute to apply to the states and their political subdivisions, and the Court will not frustrate the purpose of Congress by reading into its provisions exemptions which Congress did not see fit to put there. The argument based on the Tenth Amendment is disposed of as follows: "Since the decision in McCulloch v. Maryland, it has seldom if ever been doubted that Congress has power in order to attain a legitimate end . . . to use all appropriate means plainly adapted to that end. . . . And we have said that the Tenth Amendment 'does not operate as a limitation upon the powers, express or implied, delegated to the National Government.' . . . Where, as here, Congress has enacted legislation authorized by its granted powers, and where at the same time, a state has a conflicting law which but for the Congressional act would be valid, the Constitution marks the course for courts to follow." In Hulbert v. Twin Falls County,[31] O.P.A. regulations were held applicable to the sale of tractors by a county. Mr. Justice Douglas dissented in both cases on the ground that the intent of Congress to apply O.P.A. controls to the states was not clear.

5. STATUTORY INTERPRETATION

The Portal-to-Portal Pay Case. In Anderson v. Mt. Clemens Pottery Co.,[32] the Court was faced with claims of factory workers, grounded on the provisions of the Fair Labor Standards Act, for overtime compensation for periods of time, prior to the beginning and after the end of the standard working day, during which they engaged in activities incidental to their employment. It was this decision which set the stage for the suits totaling billions of dollars later brought by a large number of labor unions for so-called "portal-to-portal" pay. The facts in the case are complex. The company employs about 1,200 men, 95 per cent of whom are paid on a piece-work basis. The plant covers eight acres and is a quarter of a mile long. Whistles are blown for the different shifts to indicate when actual working time begins and ends. A period of 14 minutes before starting time allows employees to enter the plant, punch the time clock, walk to their places of work, change their clothes, prepare materials, etc., for work. A 14-minute period is also allowed after the end of the work-period to enable the men to get ready to leave, and punch the time clock. The time for which the employees are paid extends from the next even quarter-hour after they punch in to the quarter-hour just before the time when they punch out. "Thus an employee who punches in at 6:46 A.M., punches out at 12:14 P.M., punches in again at 12:46 P.M., and finally punches out at

[30] 327 U.S. 92, 1946. [31] 327 U.S. 103, 1946. [32] 328 U.S. 680, 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

4:14 P.M., is credited with having worked the 8 hours between 7 A.M. and 12 noon and between 1 P.M. and 4 P.M.—a total of 56 minutes less than the time recorded by the time clocks." The suit was started to recover overtime pay for this additional time of approximately 56 minutes per day. The district court appointed a master to make a finding of facts. The master recommended that the suit be dismissed on the ground that the employees had not established their claims by a "fair preponderance of evidence." He found that the time spent in walking from the entrance to the place of work need not be paid for, in view of the established custom of the industry. The time spent in preliminary duties after arriving at the place of work was not compensable, since the employees had produced no reliable figures to show the actual amount of such time. The time spent in waiting before and after shift periods need not be paid for because it was not shown that the employees were required to put in this waiting time or that they did not use it for their own purposes. The district court accepted most of these findings, but made one modification. It allowed compensation, not for the four 14-minute periods, but for a little less than half this amount of time, on the theory that the men probably began productive work this much ahead of the scheduled time inasmuch as they worked piece work, and it would be to their advantage to do so. The Circuit Court of Appeals agreed with the master and dismissed the suit, on the ground that the employees had not sustained the burden of proving by a preponderance of evidence that they were not being paid the wages to which they were entitled.

Mr. Justice Murphy spoke for the Court in a decision which upheld the claims of the plaintiffs, and sent the case back to the district court for determination of the actual amount of time for which additional pay was due. The Court made the following points. First, the employee does not assume under the statute the burden of proving by accurate figures the precise amount of overtime for which he claims compensation. It is upon the employer, not the employee, that the act places the duty of keeping accurate records of working time and other relevant facts. It is sufficient if the employee proves "that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference." Second, the employees did not prove that they were engaged in work from the time they punched in to the time they punched out. It is recognized that the time-clock records cannot accurately register actual working time, and they cannot, therefore, be made the sole basis of determining the statutory work-week. Third, they did prove that they had to be on the premises for some time before actually beginning work. Some of this time was spent in walking to the place of work, and some of it was used in various preliminary activities necessary for the beginning of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

productive work, and therefore carried on for the employer's benefit. The time used in these two ways is "working time" within the meaning of the statute and must be paid for. The Court recognized that in some instances the amounts of time involved might be so small as to be negligible. "Split-second absurdities are not justified by the actualities of working conditions or by the policy of the Fair Labor Standards Act. It is only when an employee is required to give up a substantial measure of his time and effort that compensable working time is involved." The evidence indicated that the amounts of time here involved were substantial, and this justified the Court's direction that these amounts be accurately measured so that compensation and damages could be determined.

Fair Labor Standards Act—General. In several cases, the Court added to its already long list of employments subject to the provisions of the Fair Labor Standards Act on the basis of their connection with interstate commerce. Maybee v. White Plains Publishing Co.[33] held the act applicable to the employees of a newspaper with a daily circulation of 11,000, one-half of one per cent of which went out of the state. In Martino v. Michigan Window Cleaning Co.,[34] the act was applied to the employees of a company whose business was to clean the windows of buildings the occupants of which were engaged in the production of goods for interstate commerce. In Roland Electric Co. v. Walling,[35] the company was engaged in "commercial and industrial wiring, electrical motors and generators, for private, commercial, and industrial uses." Its customers, or some of them, were engaged in interstate commerce. Its employees were held to be covered by the Fair Labor Standards Act. In Boutell v. Walling,[36] the employees held to be covered by the act were mechanics engaged in greasing and repairing motor vehicles which were rented for the transportation of automobiles and army equipment in interstate commerce.

B. QUESTIONS OF STATE POWER

1. THE FOURTEENTH AMENDMENT

Freedom of Press and Religion. Cases involving freedom of press and religion announced no new doctrine, but extended the reach of previously established principles. The case of Pennekamp v. Florida[37] turned on an issue almost identical with that in Bridges v. California.[38] Pennekamp, the associate editor of a Florida newspaper, was cited for contempt by a Florida circuit court. The contempt action was based on two editorials criticizing the circuit court and its judges for their handling of certain criminal cases then pending before the court. The editorials portrayed the

[33] 327 U.S. 178, 1946. [34] 327 U.S. 173, 1946. [35] 327 U.S. 657, 1946.
[36] 327 U.S. 463, 1946. [37] 328 U.S. 331, 1946.
[38] 314 U.S. 252, 1941. See this REVIEW, Vol. 37, p. 275.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

court as obstructing the efficient enforcement of the criminal law by the unjustified quashing of indictments and the use of other legal technicalities. The inference suggested was that the court was wilfully extending protection to lawbreakers. The record showed that the editorials contained "half-truths," did not "fairly report the proceedings of the court," and contained "misinformation." Speaking through Mr. Justice Reed, the Court reversed the conviction on the ground that there was no adequate showing of "clear and present danger" to the fair and efficient administration of justice. The editorials did not comment on evidence or rulings made during a jury trial, but were directed solely against the judges. As in the Bridges case, the Court suggests that able and courageous judges will not be influenced by such newspaper comment. "Freedom of discussion should be given the widest range compatible with the essential requirement of the fair and orderly administration of justice." The contempt citation was held to deny due process of law.

Marsh v. Alabama,[39] and Tucker v. Texas,[40] upheld as a protected exercise of religious liberty the right of Jehovah's Witnesses to distribute religious literature on the streets of a company-owned town and a federally-owned village built and managed by the Federal Public Housing Authority. In the Marsh case, conviction was for the violation of a state statute making it a crime to enter or remain on the premises of another after having been warned not to do so. Tucker's conviction was under a statute making it an offense for "any peddler or hawker of merchandise" wilfully to refuse to leave the premises after having been notified to do so by the owner. Mr. Justice Black wrote both opinions. It is well established that states and municipalities cannot bar the distribution of religious or political literature on their streets, or make such distribution dependent upon the payment of a tax, or subject to the permission of an official who could deny it at will. The fact of the private ownership of the land in these cases is not controlling. Ownership does not mean absolute dominion. When an owner opens up his property for use by the public, his rights become circumscribed by the statutory and constitutional rights of those who use it. The public has an interest "in the functioning of the community in such a manner that the channels of communication remain free." A state statute which enforces curtailment by the owner of the land of liberty of press and religion violates the First and Fourteenth Amendments. "When we balance the constitutional rights of owners of property against those of the people to enjoy freedom of press and religion, as we must here, we remain mindful of the fact that the latter occupy a preferred position." In the Tucker case, it is stated that neither Congress nor any federal agency acting under its authority could abridge religious liberty; nor is there any indication in the federal statutes or the Housing Authority

[39] 326 U.S. 501, 1946. [40] 326 U.S. 517, 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Regulations of any intention to do so. In both cases, Chief Justice Stone and Justices Reed and Burton dissented.

The Right of Accused Persons to Counsel. Whether denial to an accused person of the right of counsel amounts to a denial of due process depends upon the circumstances of the denial and its effect upon the essential fairness with which the accused is treated. In Canizio v. New York,[41] the Court, speaking through Mr. Justice Black, held that due process had not been denied to the petitioner. A nineteen-year-old boy was allowed to plead guilty of the crime of robbery without being represented by counsel, and without being told that he had a right to counsel. The record showed, however, that he was actively represented by counsel during a long hearing preceding the imposition of sentence. It appeared that he had pleaded guilty on condition that two other charges against him be dropped. His attorney, furthermore, had ample opportunity to move to withdraw the plea of guilty had it seemed to him advisable, and the court could have set the plea aside and let the petitioner stand trial. "Even though the petitioner may not have had counsel at the beginning, he had counsel in ample time to take advantage of every defense which would have been available to him originally." Justices Murphy and Rutledge each wrote a dissenting opinion. Mr. Justice Rutledge observed: "In my opinion, the damage done by the original invalid plea was not removed by the attorney's eleventh-hour entry." In Hawke v. Olson,[42] the petitioner, who was convicted of murder, alleged that after his arrest he was held incommunicado except for a brief visit by the public defender who tried to intimidate him into a plea of guilty. He was arraigned the next morning, pleaded not guilty, but was denied a continuance of twenty-four hours for the purpose of consulting counsel, calling witnesses, and preparing a defense. The trial proceeded immediately, and the public defender thereupon stepped forward and entered the case, without having consulted the petitioner. Speaking through Mr. Justice Reed, the Court held that the facts alleged, if true, amounted to a denial of due process, and that the petitioner was clearly entitled to an opportunity to prove that they were true.

Due Process and the Police Power. In Asbury Hospital v. Cass County,[43] the Court held valid a North Dakota statute of 1933 providing that corporations, both domestic and foreign, which own lands used or usable for farming or agriculture, except such as is reasonably necessary in the conduct of their business, shall dispose of such lands within ten years. Upon their failure to do so, the county in which the lands are located is required to sell them at public auction and pay the proceeds, less the expense of the sale, to the former corporate owner. The Hospital attacked the constitutionality of the act in a suit for a declaratory judgment. It owned lands in Cass county which it had acquired by the foreclosure of a mortgage, and

[41] 327 U.S. 82, 1946. [42] 326 U.S. 271, 1945. [43] 326 U.S. 207, 1945.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

these lands were leased to farmers. Efforts to sell the land at a price sufficient to cover the original mortgage debt had failed. The Court, in an opinion by Chief Justice Stone, alluded to the well-established doctrine that the Fourteenth Amendment does not deny to a state the power to bar foreign corporations from doing business or acquiring or holding property within the state. This power of the state does not end as soon as a corporation has entered the state lawfully and acquired property therein. The corporation continues to hold property in the state on sufferance, and may, without denial of due process, be required to sell it. Nor does due process require that it recapture the cost of the land.

In 1940, a four-story lodging house was erected on the Bowery in New York City. It complied with all existing laws applicable to lodging houses. In 1944, the New York Multiple Dwelling Law was amended to require that, among other things, all lodging houses of non-fire-proof construction existing before the enactment of the amendment should meet certain new requirements, including the installation of an "automatic wet pipe sprinkler system." In Queenside Hills Realty Co. v. Saxl,[44] which was a suit for a declaratory judgment, the Court held that the lodging-house owner was not denied due process by the requirement of the sprinkler system. "It is for the legislature to decide what regulations are needed to reduce fire hazards to a minimum." The police power is not being exercised arbitrarily. The charge that the amendment denies equal protection of the laws because it imposes the sprinkler system requirement on lodging houses existing in 1944, and not to those erected thereafter, is met by pointing out that there has been no showing that there are any such lodging houses in existence which will escape the law. One cannot prove discrimination by prophesying inequalities which may come into existence in the future, but which do not at present exist.

2. STATE-FEDERAL RELATIONS

State Taxation of Federal Interests. The Court's recent disposition to sanction claims of intergovernmental tax immunity only when very substantial reasons exist for so doing is evidenced in three cases. In S.R.A., Inc. v. United States,[45] the federal government owned land in Minnesota which it sold under a contract providing for a cash payment and annual installments. All of the contract obligations were met, but the major part of the purchase price was not yet due and remained unpaid. Minnesota levied the customary property tax upon this land, "subject to fee title remaining in the United States." The Court held the state tax valid. The equity in the land had passed to the purchaser; the government retained "only a legal title as security." The Court referred to the long line of cases in which federal property has been held immune from state taxation, and

[44] 328 U.S. 80, 1946. [45] 327 U.S. 558, 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

stated: "We do not, however, conclude that their rationale leads to an exemption from state taxation of all lands in which the United States holds legal title as security for the purchase price." In R.F.C. v. County of Beaver,[46] the Court held that the Reconstruction Finance Corporation Act of 1932 did not intend to allow the states to tax any property of the R.F.C. except realty. In Pennsylvania, machinery is classified as real property, and Beaver county taxed machinery in a plant owned by an R.F.C. subsidiary. The federal statute does not define "real property," and the Court decided that "the Congressional interest will best be accomplished by the application of settled state rules as to what constitutes 'real property.' " The tax was held valid. In Wilson v. Cook,[47] the Court held that Arkansas could validly collect a "severance" tax upon the cutting of timber, under contract with the federal government, on forest reserves which are part of the public domain of the United States. The forest lands were acquired by purchase and not by cession from the state, and therefore federal jurisdiction over them was not exclusive and the state's power to levy the tax remained intact.

State Police Power and Interstate Commerce—Racial Segregation on Interstate Buses. Of the cases involving the validity of state police regulations affecting interstate commerce, the most important was Morgan v. Virginia,[48] in which the Court held that a Virginia statute requiring the segregation of Negroes and whites on interstate buses unduly burdened interstate commerce. Mr. Justice Reed, for the Court, emphasized that in the field of transportation where Congress has not acted, "a state may validly enact legislation which has predominantly only a local influence on the course of commerce." State statutes regulating racial association on interstate vehicles have much more than a local influence. Bus transportation reaches all over the country. Eighteen states prohibit racial segregation on public carriers; while ten states require segregation on motor carriers. The enforcement of these state laws against carriers engaged in interstate transportation produces cumulative inconveniences and burdens, among which are the repeated shifting of seats upon reaching state lines, as well as the difficulties of applying the various definitions used to identify white and colored passengers. In Hall v. De Cuir,[49] in 1877, the Court held that interstate commerce was invalidly burdened by a state law forbidding racial segregation on public conveyances. "The transportation difficulties arising from a statute that requires commingling of the races, as in the De Cuir case, are increased by one that requires separation, as here." The Court concludes: "It seems clear to us that seating arrangements for the different races in interstate motor travel require a single, uniform rule to promote and protect national travel. Consequently, we hold the Virginia statute in controversy invalid."

[46] 328 U.S. 204, 1946.
[47] 327 U.S. 474, 1946.
[48] 328 U.S. 373, 1946.
[49] 95 U.S. 485, 1877.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

State Power to Regulate or Tax the Business of Insurance. After the decisions in United States v. Southeastern Underwriters Association[50] that the business of insurance is interstate commerce, Congress passed in 1945 the McCarran Act which provided that the continued taxation and regulation of the insurance business by the states was in the public interest and that the failure of Congress to tax or regulate the business should not be construed as a barrier to its regulation or taxation by the states. In Prudential Insurance Co. v. Benjamin,[51] the Court held this act valid and refused to enjoin the collection by South Carolina of a license tax upon a foreign insurance company, based upon the amount of premiums from business done in the state. In Robertson v. California,[52] the Court sustained a conviction for violating a state statute which required every insurance agent in the state to be licensed by the state, and forbade his acting as an agent for a company which had not been admitted to do business in the state.

3. CONTRACT CLAUSE—NEW YORK MORTGAGE MORATORIUM

The New York Moratorium Law was passed in 1933. It suspended the right of foreclosure of mortgages, but provided for the payment of interest and for amortization of the debt. Any doubts about its constitutionality were settled by the Supreme Court's decision in the Minnesota case of Home Building & Loan Assoc. v. Blaisdell.[53] The act was extended from time to time by the legislature. The last extension took place in 1943 and was grounded upon the report of a joint legislative committee which had made an exhaustive study of the whole mortgage situation. The improvement in economic conditions was reflected in the provisions of the 1943 statute, which increased the rate of amortization. In East New York Savings Bank v. Hahn,[54] the validity of the renewal act was attacked on the ground that the emergency conditions which led to its enactment no longer exist, and that it therefore violates the contract and due process clauses. The Court, speaking through Mr. Justice Frankfurter, rejected this view and held the act valid. He pointed out that "the New York Legislature was advised by those having special responsibility to inform it that 'the sudden termination of the legislation which has dammed up normal liquidation of these mortgages for more than eight years might well result in an emergency more acute than that which the original legislation was intended to alleviate.' . . . It would be strange indeed if there were anything in the Constitution of the United States which denied the State the power to safeguard its people against such dangers. There is nothing."

[50] 322 U.S. 533, 1944. See this REVIEW, Vol. 39, p. 300.
[51] 328 U.S. 408, 1946. [52] 328 U.S. 440, 1946.
[53] 290 U.S. 398, 1934. See this REVIEW, Vol. 29, p. 54.
[54] 326 U.S. 230, 1945.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

AMERICAN GOVERNMENT AND POLITICS

THE FEDERAL ADMINISTRATIVE PROCEDURE ACT

FOSTER H. SHERWOOD
University of California (Los Angeles)

The President's signature of the new Administrative Procedure Act[1] completed the second or legislative phase of the reform of administrative procedure which began with the introduction and passage of the ill-fated Walter-Logan bill in 1939–40. The investigatory phase which preceded it had its beginning in the reluctant recognition accorded administrative law as a separate discipline at about the turn of the century. The refusal to recognize the existence of administrative law gave way before a volume of literature on the subject, and became transformed into a criticism of the administrative process itself.[2] The movement for reform of which the act of 1946 was the culmination has come largely in answer to these criticisms. Ignoring differences in phraseology and attacks on specific agencies, most critics appear to agree on the following arguments:[3]

(1) *The administrative process is essentially dangerous in that it ignores the traditional American theory of the separation of powers, a principal protection against tyranny and dictatorship in the United States.* This argument may appear in several forms. Sometimes it is said that administrative law is to be deplored because it is typical of alien countries which are not as advanced politically as we. In the hands of the American Bar Association, this argument is used to point up dangers inherent in any system that has a tendency to limit judicial review. And sometimes the allegation is merely that the administrative process is a violation of the separation theory, leaving the evils of such a violation to implication. Although it is not proposed here to attempt to refute or qualify these arguments, it is clear that the critics' point is based upon a rather strict and complete separation of powers, a somewhat doctrinaire understanding.[4]

(2) *The administrative process is frequently unfair since it permits the functions of prosecutor and judge to be discharged by the same individual*

[1] Pub. Law 404, Ch. 324, 79th Cong., 2nd sess., approved June 11, 1946.

[2] Cf. Felix Frankfurter, "The Task of Administrative Law," *Univ. of Pa. Law Rev.*, Vol. 75, p. 614 (1927).

[3] The volume of such criticism is almost unlimited. But see, as leading examples, James M. Beck, *Our Wonderland of Bureaucracy* (New York, 1932); Carleton K. Allen, *Bureaucracy Triumphant* (London, 1931); *Amer. Bar Assoc. Reports*, LVII, 407; LIX, 539; LX, 136; LXI, 723; LXII, 789; LXIII, 331; LXIV, 574; LXV, 215; LXVI, 439; LXVII, 226; LXVIII, 249; LXIX, 271.

[4] Cf. Charles G. Haines, "The Adaptation of Administrative Law and Procedure to Constitutional Theories and Principles," in this REVIEW, Vol. 34, p. 12 (1940); Jerome Frank, *If Men Were Angels* (New York, 1942), Chaps. 13–15.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Occasionally appropriate examples of this vice are given, but usually the illustrations cited show that the author is attempting to apply the standards of ordinary adversary litigation uniformly to the whole administrative process.[5]

(3) *Administrative agents as a group belong to the political branches of the government, and lack the training and experience necessary to give them judicial impartiality.* Such individuals are said to have demonstrated their susceptibility to political pressures, which are in fact inevitable on account of their location in the structure of government. Further, they do not show a proper respect for the traditions and practices of the common law, since they are not necessarily trained in the law. Finally, the procedure that is developed by such non-judicial agents emphasizes results to the detriment of the constitutional liberties of the individual.

(4) *Congress, in making provision for administrative agencies, has frequently abdicated its proper function by turning over to such bodies a large share of public policy-making, which is carried on in secret and without popular controls.* This charge sometimes takes the form of an allegation that Congress has delegated unlimited power to its agents; or that the power thus granted is given without restriction or standards and is liable to abuse or arbitrary usage.

(5) *Congress has created agencies as the need has arisen without attempting to fit them into any pattern or to standardize their procedures and methods.* The result has been to create a "wonderland" of agencies and regulations that cannot be understood by either the individual or his attorney.

Emphasis among the above attacks has varied from time to time and group to group. Some proposals have emphasized structural reforms almost exclusively. Thus the President's Committee on Administrative Management recommended a separation of the decision-making function and personnel from other parts of the agencies involved.[6] This was followed, beginning in 1938, by Senate consideration of a number of bills to create a legislative administrative court.[7]

Meantime, other lines of attack were being developed. The American Bar Association appointed a Committee on Administrative Law in 1933 which after considerable investigation and debate framed a statute sponsored by the Association and introduced in Congress in 1939.[8] At approxi-

[5] This point of view is explored in the Report of the AdministrativeLawCommittee of the District of Columbia Chapter of the National Lawyers Guild, *Law. Guild Rev.*, Vol. 5, p. 81 (1945).

[6] President's Committee on Administrative Management, *Report with Special Studies* (Washington, D. C., 1937), 41–42.

[7] S. 1835, 73rd Cong., 1st sess.; S. 3787 and H.R. 12297, 74th Cong., 2nd sess.; S. 3676, 75th Cong., 3rd sess.; H.R. 234, 76th Cong., 1st sess.; S. 916 and H.R. 4235, 76th Cong., 1st sess.

[8] H.R. 6324, 76th Cong., 3rd sess. Cf. Amer. Bar Assoc. *Reports*, LXIII, pp. 331 ff.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

mately the same time, and at the suggestion and under the leadership of the Attorney-General, the President appointed a Special Committee on Administrative Procedure. The Association bill, which became known as the Walter-Logan bill, passed Congress in 1940, while the report of the Attorney-General's Committee was still awaited.

The approach of the Walter-Logan bill was one which also emphasized the structural point of view, since the solution which it offered was largely one of enlarging judicial controls over the agencies affected. All government agencies, except those specifically exempted by the statute, were divided into two groups: those headed by a single administrator, and those headed by a board or commission of three or more members. In the former, administrative orders and decisions were to be made by specially created employee boards; in the latter, hearings might be held by examiners, but decisions were to be made by the board or commission itself. Decisions of employee boards were to be written and to include a statement of the findings upon which they were based. Interpretative rules were to be made only on notice and after hearing, and were to be binding only after publication unless the President proclaimed an emergency. No provision was made in the act recognizing a right to petition for a change of rules thus issued. Nor did the measure contain any descriptions of procedure or content of hearings or notice. Judicial review of administrative action in the Court of Appeals of the District of Columbia, the Court of Claims, or any circuit court of appeals was to be available to determine the existence of substantial evidence, or whether there was support in findings of fact contained in the record, or to determine jurisdictional, legal, and constitutional questions. The requirements of the bill would have applied to all government acts of administrative agencies without discrimination—licensing, final orders, intermediate orders, rules of general application, rules of specific application, etc.—except for the list of older administrative bodies that were specifically exempted from all provisions of the act.

Among other reasons given by the President for his veto of the Walter-Logan bill[9] was the coming report by the Attorney-General's Committee.[10] This report, together with the veto of the Bar Association bill, resulted in the introduction of three new bills in Congress in 1941. One of the number was an outgrowth of the Committee's studies, and was written by its majority.[11] It emphasized the need for continuing study and piecemeal reform through the establishment of an Office of Administrative Procedure. The same Office was to nominate hearing officers and to protect them in their tenure of office. The bill concerned itself with only those adjudications which under existing statutes had to be made after hearing and upon a

[9] For the message, see 76th Cong., 3rd sess., House Doc. No. 986.

[10] Attorney-General's Committee on Administrative Procedure, *Final Report* (Washington, D. C., 1941).

[11] S. 675, 77th Cong., 1st sess.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

record; and with respect to such action, it attempted to standardize the meaning of the requirements. It stipulated when a hearing would be necessary, provided that when hearings were not held before agency heads they should be held before the hearing officers designated, described the powers and duties of such officers, guaranteed to parties the right to appear and present evidence, and provided rules to govern agency review of such decisions. With respect to rule-making, the bill merely standardized provisions concerning publicity. These were the reforms that the Committee felt justified in making on the basis of the studies already conducted. But the proposed Office of Administrative Procedure was to continue such studies and recommend changes from time to time to the agencies concerned or, if necessary, to Congress.

A second bill was written by a minority of the Committee.[12] It also proposed the establishment of an Office of Administrative Procedure, and with similar functions. The minority bill, however, concerned itself with a larger share of the field of administrative action. The issuance of administrative rules must be preceded by any one of several specified hearing procedures. The rules referred to included statements of agency organization, general policies, interpretations, procedures, forms and instructions, as well as statements of substance where expressly authorized by statute. Judicial review of such rules was to be available at any stage of their application or threatened application, or upon proper petition for a declaratory judgment, under provisions similar to those of the Walter-Logan bill. With respect to administrative adjudication also, this proposed act followed the Walter-Logan bill, except that certain functions were exempted from its provisions rather than named agencies. It applied to all such activity unless specifically exempted, whether or not a hearing was required under existing statutes. Notice and hearing procedures were specified in some detail, and these requirements applied not only to the hearings held by commissioners provided in the act, but to all hearing and deciding officials. The bill proposed to confer a right of judicial review upon "any person adversely affected."

The third proposed act was one again sponsored by the American Bar Association.[13] In its principal provisions, it paralleled both the minority and Walter-Logan bills, except that it established neither the employee boards of the Walter-Logan Act nor the Office of Administrative Procedure of the other proposals. A large number of agency functions were excepted from certain provisions of the act; rule-making was to be reviewable in the courts, but only after administrative remedies were exhausted; and decisions were to be reviewable under provisions similar to those in the minority bill.

[12] S. 674, 77th Cong., 1st sess.

[13] H.R. 3464 and S. 918, 77th Cong., 1st sess.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Extensive hearings were held on these three proposals by the Senate Committee on the Judiciary throughout most of 1941, but no action was taken since no one of them could secure sufficient support.[14]

On June 21, 1944, two new bills were introduced;[15] and they were revised and reintroduced in the Seventy-ninth Congress.[16] Agencies and others interested were invited to appear and testify before the House Committee on the Judiciary and submit written statements to the Senate Committee on the Judiciary. The new proposals were sponsored by the American Bar Association, which played a leading part in the deliberations of the committees,[17] and by the minority of the Attorney-General's Committee, so that the statute as finally written bears close resemblance to earlier plans formulated by these two groups.[18] The Attorney-General's Committee also sponsored the introduction of two new versions of its original bill;[19] but these received no committee consideration and were quite forgotten when the new Attorney-General removed the last obstacle to the passage of the Bar Association proposal by endorsing it in a letter to the House and Senate Committees on the Judiciary.[20]

In its general provisions, the new act can be contrasted sharply with the statute written by the Attorney-General's Committee. Like the Walter-Logan bill, it contains no statement of policy and makes no provision for the continuing study of these problems through a device such as the Office of Administrative Procedure. The "right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative," is recognized in a manner even broader than the Walter-Logan bill's statement that attorneys should be eligible to practice before agencies "unless otherwise prohibited by law." Investigatory powers not limited, or even mentioned, in the Walter-Logan or majority bills are handled in a manner similar to that of the minority and second Bar Association bills. Investigations are restricted to those expressly authorized by law, and subpoenas are similarly limited to issuance when authorized

[14] Senate Committee on the Judiciary, *Hearings on S. 674, S. 675, and S. 918*, 77th Cong., 1st sess.

[15] H.R. 5081 and S. 2031, 78th Cong., 1st sess. Cf. *Amer. Bar Assoc. Jour.* Vol. 30, p. 226 (1944).

[16] H.R. 1203 and S. 7, 79th Cong., 1st sess.

[17] The Committee on Administrative Law of the American Bar Association issued at about this time a monograph, *Legislative Proposals on Federal Administrative Procedure* (Chicago, 1944), which discussed the pattern of the bills and compared them with the Association's declaration of policy on the subject adopted in 1941.

[18] The Association's Committee on Administrative Law calls the final statute a revision of the minority proposals. *Amer. Bar Assoc. Jour.*, Vol. 31, p. 624 (1945).

[19] H.R. 184 and H.R. 1206, 79th Cong., 1st sess.

[20] For the text of the letter, see *Amer. Bar Assoc. Jour.*, Vol. 31, p. 619 (1945).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

by law on a showing of reasonable scope and general relevance of the evidence sought.

With respect to the provisions concerning administrative rule-making, the parallel is equally close. Exemptions follow the pattern of the minority bill rather than of the Walter-Logan bill, which granted blanket exceptions to all of the act for certain specified agencies. Exceptions here include national defense and foreign affairs activities, and all matters "relating to agency management or personnel, or to public property, loans, grants, or benefits." Rules specified include descriptions of organization and delegations, procedures and forms, and substantive rules and interpretations. The coverage is similar to that of all but the second Association bill, which did not include forms and rules of practice, and the Walter-Logan bill, which applied to interpretative rules only.

As was true of the minority bill, the issuance of rules must be preceded by notice and by opportunity for interested parties to participate. This requirement applies to all rule-making where a hearing is required by statute, unless the agency finds, and so announces, that the procedure is "impractical, unnecessary, or contrary to the public interest," or unless existing statutes require a hearing and a record. In the latter event, the procedure specified is the adjudicatory one discussed below. Further, "every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule." Finally, such rules are subject to judicial review at the instance of any "aggrieved" person. This whole section differs from the minority bill only in that the act described several alternative procedures available which were to apply to all rule-making, whether or not a hearing was required in existing statutes, and in that in the minority bill the agency was not required to find and publish the reasons for not holding a hearing.

With respect to administrative adjudications, the parallel is almost as close. Exceptions to this section are similar to those of the minority bill, and include all matters subject to trial *de novo* in a court under existing law, all matters involving government personnel except examiners appointed under this act, proceedings resting solely on inspections, tests, or elections, military, naval or foreign affairs functions, agents acting for a court, and employee representation certification proceedings. These exceptions are somewhat different from those provided in previous bills, which usually exempted all arbitration and mediation of labor disputes, fiscal and monetary operations of the Treasury and Federal Reserve Board, relief, procurement or disposition of public property or works, lending, spending, and taxation. But since this section applies only to matters required by statute to be determined on a record after hearing, and since the earlier proposals were intended to supersede all existing statutory requirements, the difference is not great.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Notice must be given in all applicable cases, including those instances of rule-making noted above, and must contain a statement of the time and place of hearing, the authority under which held, and the matters of fact and law asserted. Presiding officers at the hearings are required to limit their attention to evidence publicly introduced and are forbidden to consult with one adversary except in the presence of the other. Further, the presiding officer is made immune from direction or control of any investigating or prosecuting employee regardless of whether or not he is engaged in the same case. These provisions do not apply to applications for initial licenses or to public utility rate or facility proceedings.

The hearing thus provided for is to include an opportunity to present oral evidence and to cross examine to the extent required "for a full and true disclosure of the facts." In determining claims for money or benefits or initial applications for licenses, an agency may require that all or a part of the evidence be submitted in written form. The statute also forbids the issuance of any rule or order "except upon the consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence."[21] This probably means that in all hearings required preceding the issuance of rules, the evidence must support the rule to the same degree as is required in the case of an adjudication. If so, it is a more strict requirement than that of any previous bill and represents an important limitation on the ability of agencies to issue rules. Previous proposals provided for judicial review of rule-making to determine matters of constitutional and statutory rights and matters of procedure in rule-making, which would have been an innovation; but this provision encourages judicial review of the weight of the evidence introduced in such quasi-legislative hearings. In all other important respects, these hearing procedures parallel those of the minority bill.

With respect to the decisions of such agencies, the provisions of the act are not materially different from previous proposals. Decisions may be made by hearing officers or by the agency itself, whether the hearing was before it or not, the latter being a new variation. Such decisions become final unless within a period specified by the agency an administrative appeal is taken either on its own motion or on that of a party. Whenever the decision is made by the agency without having presided at the hearing, a tentative decision must be recommended unless the agency finds on the record that such a procedure is impractical. The decision must include findings and conclusions and the evidence upon which they are based for all material issues of fact, law, or discretion presented in the record. These provisions are made applicable for the first time to some instances of rule-making as well as adjudication, as noted above.

[21] Pub. Law 404, Ch. 324, sec. 7 (c), 79th Cong., 2nd sess.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The section of this act that concerns judicial review is somewhat less stringent than those found in previous Bar Association proposals. Where the Walter-Logan and second Bar Association bills attempted to provide an all-inclusive review procedure which would be uniform, the new statute recognizes all existing adequate forms of action and creates no new remedies. The right of review in the courts is recognized as belonging to "any person suffering legal wrong because of any agency action, or adversely affected or aggrieved," except where existing statutes preclude judicial review, or "agency action is by law committed to agency discretion."[22] The review thus guaranteed applies to all final acts, including action otherwise final which has not been presented as an appeal to superior agency authority. This attempts to modify the well recognized rule that administrative remedies must be exhausted before resort to the courts can be successful. Review extends to include determination of charges that agency action is "(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements [of hearings under this act] or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial *de novo* by the reviewing court."[23]

It is clear from the foregoing comparison that the authors of this statute have made but few changes from their preceding proposals, retaining many features both good and bad. For example, while the exceptions to the requirements of notice and hearing in rule-making have largely been taken over from the minority bill, the section is likely to do more harm than good. While presumably excepting such orders as weekly volume regulations, daily grade and size regulations, and daily loading and shipping prohibitions of the Agricultural Marketing Administration, and some rules of the Federal Reserve Board, the Securities Exchange Commission and other agencies, where such requirements would constitute fatal delays, publicity, or dangers, such exceptions are based on express findings. It is difficult to anticipate the source of facts for findings in the absence of hearings and within the limits that are imposed on investigations in the statute. And, of course, the question of the legitimacy of the exception is merely an additional source of litigation and delay. The very broad definition of what rules are seemingly excludes very little. Would an agency be forced to issue rules covering all phases of its work, including, for example, considerations which will cause it to recommend the institution of criminal proceedings for a violation of its substantive rules? Nor does the

[22] *Ibid.*, sec. 10. [23] *Ibid.*, sec. 10 (e).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

law make clear whether an agency is limited to acting under its own rules or whether it may act directly under the statute; nor, for that matter, whether the agency is bound by its interpretative or substantive rules until formally changed. The guarantee of a right of petition for a change in rules is another provision of doubtful value. If consideration of such petitions is compulsory, the agency may very well be swamped by frivolous requests having delay as their sole objective.

With respect to adjudications as well, not all of the inadequacies of previous bills have been eliminated. In the abstract, a separation of judging and prosecuting functions is a sound principle. But it is difficult if not impossible to point to the difference between these activities in many cases. Merely because the government takes the initiative, it does not always follow that it occupies the position of prosecutor even in all cases of rule-making; and, as has been noted, this section applies the separation to some rule-making as well. This the statute admits when it excepts licensing from these adjudicatory requirements. But licensing is merely a different regulatory method which may be used as a substitute for other adjudicatory techniques in many cases. Further, the statute requires the decision to be made exclusively on the record, which will prevent an administrative hearing officer from utilizing his experience and training—a use which constitutes the reason for his position, and which has been judicially approved.[24] Again, while notice and hearing prior to adjudication are usually virtues of a high order, they may become evils when uniformly required. The courts have for a long time recognized that, in matters of taxation and public health particularly, summary administrative orders may be necessary preceding a hearing.[25] Yet no provision is made for such orders and hearings, and the implication of the act is that they are forbidden, even though they have a good judicial model in the temporary injunction.

The third type of administrative action, i.e., licensing, is carefully distinguished from rule-making and decision-making. But again, over-careful consideration of the interests of private parties may endanger the public interest. The law provides: "Except in cases of willfulness, or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been ac-

[24] Chicago, etc. Ry. Co. v. Babcock, 204 U. S. 585 (1907); Boggs & Buhl, Inc. v. Comm. of Int. Rev., 34 F. (2nd) 859 (C.C.A. 3rd, 1929).

[25] No. Amer. Cold Storage Co. v. Chicago, 211 U.S. 306 (1908); Bragg v. Weaver, 251 U.S. 57 (1919); Rindge Co. v. Los Angeles, 262 U.S. 700 (1923); Nickey v. Mississippi, 292 U.S. 393 (1934); Driscoll v. Edison L. & P. Co., 307 U.S. 104 (1939).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

corded opportunity to demonstrate or achieve compliance with all lawful requirements."[26] Such a provision invites litigation over its exceptions; but, more important, it is an open invitation to licensees to violate the law until caught. For presumably there is no penalty for past violations if obedience is promised for the future.

Even though the provisions for judicial review are somewhat less sweeping than in previous statutes, problems will be created by the act. The review section does not apply where "agency action is by law committed to agency discretion." Presumably, if by "law" is meant judicial construction, a considerable exception has been granted; but if only statutory language conferring such discretion is to be included, the exemption is almost non-existent. Further, the act makes no distinction between the review of administrative orders or decisions and the review of administrative rules. To be sure, the distinction between them is difficult to draw in many cases, since "cease and desist" orders, and some orders of the Maritime Commission,[27] for example, are legislative in form and adjudicatory in effect. But there is some doubt whether the courts would be able to review a rule of general applicability and future effect prior to its application in a particular case.[28]

It is clear that the proponents of the act have adopted as their model ordinary judicial procedure in an adversary action. This doctrinaire approach leaves much to be desired in terms of adequacy when applied, as it is, to almost the entire field of administrative action. No study of the administrative process yet conducted has done more than cover a part of the field. This act goes farther than any study, yet makes no provision for further study and experimentation. But even on the basis of the conducted studies, some general results can be anticipated. The assumption of the adversary model as generally applicable to administrative action is false. When applied to rule-making, it ignores the history of legislatures, which has shown the need for investigatory and other techniques.[29] It assumes that the interested parties are individuals and that their separate interests are as great as the interest of the public. And it assumes that all parties to be affected can be known in advance and have equally easy access to hearings. Such a point of view is sound in many instances, but the judgment must be made in the instance and not generally. Even within the

[26] Pub. Law 404, Ch. 324, 79th Cong., 2nd sess., Sec. 9 (b).

[27] See Attorney-General's Committee on Administrative Procedure, Document 186, pt. 4. The orders referred to are those issued under Sec. 19 of the Merchant Marine Act of 1920 (41 Stat. 988).

[28] This doubt seems to originate with Keller v. Potomac Electric Co., 261 U.S. 428 (1923). Cf. Inland Empire Council *v.* Millis, 325 U.S. 697 (1945).

[29] Cf. Ralph F. Fuchs, "Procedure in Administrative Rule-Making," *Harvard Law Rev.*, Vol. 52, p. 259 (1938).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

field of adjudication, "trial by combat" does not always embody all the virtues of fair play.[30]

The foregoing comparison shows that the critics of the administrative process have maintained a high degree of consistency in their arguments. To be sure, it is admitted that the administrative process is here to stay; few any longer dispute that. But if it is to be tolerated, it will be reduced to the familiar terms of the separation-of-powers theory. Prosecution is to be separated from judging, whether or not the prosecutor prosecutes, or the judge adjudicates, in the accepted sense. As many as possible of the characteristic and unique trial-and-error techniques of administration are to be destroyed or hedged about with inapplicable restrictions.[31] And the development of new techniques to suit particular problems is to be discouraged. With all this, the inadequacies of the act are to come to the attention of Congress only through accident, and not as a result of any systematic and continuing professional study.

The next and third phase of the reform movement will be the most difficult to follow. It will be concerned with the application, interpretation, and amendment of this still unsatisfactory statute.

STRENGTHENING STATE LEGISLATURES

LYNTON K. CALDWELL
Council of State Governments

Declining prestige of legislative bodies has recently prompted inquiries looking to self-appraisal and reform in Congress and in legislatures of a number of the states.[1] Dissatisfaction with the traditional organization and procedure of state legislatures has grown among legislators, who undertake the perplexities of present-day law-making with inadequate assistance and ineffective machinery. Legislation was seldom a simple problem, but it is today more difficult than at any time in our national history. As the responsibilities thrust upon legislatures are increased, so must the tools and processes of legislation be improved if the quality of legislation is to meet the needs which call it forth.

To assist in the reappraisal and review of state legislative organization and procedure, twelve general suggestions for strengthening state legisla-

[30] See Thurman W. Arnold, "Trial by Combat and the New Deal," *Harvard Law Rev.*, Vol. 47, p. 913 (1934).

[31] The trial and error method is considered one of the prime virtues of the administrative process by Professor Dickinson. See John Dickinson, *Administrative Justice and the Supremacy of Law* (New York, 1927).

[1] John A. Perkins, "Congressional Self-Improvement," in this REVIEW, Vol. 38, pp. 499–511 (June, 1944); "State Legislative Reorganization," *ibid.*, Vol. 40, pp. 510–521 (June, 1936).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tures have been reported to the Council of State Governments by a committee of state officials. Appointed in November, 1945, by the Board of Managers of the Council, the Committee on Legislative Processes and Procedures[2] developed its report after broadly surveying legislative theory and practice and selecting for recommendation to the states those measures of most general application. Dealing with the problems of state legislatures generally, the committee decided at an early date to direct its attention to the strengthening of state legislatures as presently constituted. Questions of reapportionment, of representation in the legislature, proportional representation, unicameralism, and certain mechanics of procedure such as electrical voting were not treated in the final report. The committee held that any attempt to develop a program covering all phases of the legislative process would diffuse its efforts to the extent of defeating its purpose. Certain questions, notably legislative reapportionment, of particular interest in several states were not issues of primary concern to the greater number of states. Recognizing that no program could be drafted which would answer the needs of all states, the committee chose to limit its recommendations to those measures which might be expected to bring greatest benefit to the greatest number of the states.

Following are the recommendations of the committee, with brief comment on their application:

1. *Legislative Sessions.* Restrictions upon the length of regular sessions should be removed. If legislatures may be called into special session by governors or by a majority of their members without undue restrictions upon the measures to be considered, the question of annual versus biennial sessions is largely resolved.

The increasing number and complexity of public questions requiring legislative consideration have made obsolete traditional restrictions upon the length of legislative sessions. That constitutional and statutory limits upon the length of sessions do prevent legislatures from sitting as long as the effective discharge of their duties might require is suggested by a comparison of the average length of sessions in states which have restricted duration and those that do not. In 1943, the average length of sessions in twenty-six states limiting duration was approximately 73 days. In the twenty-two states having no restrictions, the average length was 114 days.[3] Allowing for differences among the states with respect to how the actual number of days of a legislative session is calculated, and recognizing that for some states all legislative business may be adequately dispatched

[2] Members of the committee were Senator Floyd E. Anderson of New York (chairman); D. Hale Brake, state treasurer of Michigan; Senator Grant Mcfarlane of Utah; Senator M. C. Matthes of Missouri; John M. Rankin, attorney-general of Iowa; Representative George W. Stetson of Massachusetts; Senator Lee B Weathers of North Carolina; Senator Joseph Reavis of Nebraska; and Representative George Yantis of Washington.

[3] Cf. *The Book of the States, 1945–46*, pp. 108, 113.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

within the limits imposed upon the length of the session, the committee concluded that little was to be gained by restricting session length, whereas much was likely to be lost.

After considering annual versus biennial sessions, the committee concluded that no general recommendation could be made to the states with respect to this question. Six states—California, Massachusetts, New Jersey, New York, Rhode Island, and South Carolina—now have annual sessions; but provisions for special sessions permit the legislatures of all states to meet annually, or even more frequently if necessary. During 1946, seventeen state legislatures convened in special session, and in California, Illinois, Michigan, and New Jersey two special sessions were held; three were held in Arizona and four in Ohio. In a number of states, restrictions upon the agenda of special sessions limit their value as a substitute for annual sessions. The committee concluded that although regular annual sessions might not be necessary for a considerable number of the states, consideration should be given to liberalizing the rights of the legislature with respect to the measures to be considered in special sessions, thus in large measure resolving the question of annual versus biennial sessions.

2. *Legislators—Compensation.* From the viewpoint of good public service, the compensation of state legislators is now too low. Annual salaries sufficient to permit competent persons to serve in legislatures without financial sacrifice should be provided by statute. Salaries should not be fixed by constitutional provision.

Whether increased compensation for legislators will result in a more competent and independent legislature is a moot question. The committee believed increased legislative compensation justified upon the basis of the present responsibilities of legislators. Obviously, no uniform level of legislative salaries could be prescribed for all states. Nevertheless, the committee felt that in most states a review of the compensation of the legislators was in order, and particularly that the method of fixing salaries by constitutional provision should be abandoned. It was believed that the sensitivity of legislators to unfavorable public response to increased legislative salaries would provide adequate check upon the legislature, and that it is unwise to freeze a particular pattern of compensation by writing it into the state constitution.

3. *Legislators—Terms.* In order to strengthen legislatures by increasing continuity of membership, the lengthening and staggering of legislative terms should be considered. In representative government, frequent elections are necessary. Experienced legislative leadership and smoothly operating legislative machinery likewise contribute to the attainment of democratic objectives.

There appears to be growing feeling among legislators that the variety and complexity of contemporary legislative problems places a higher premium on experience in the legislature and on continuity of legislative

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

membership than in earlier days. Offsetting this consideration is the traditional reliance upon frequent elections to hold a legislature accountable to public opinion and responsive to changing public views. It was the belief of the committee that the possibilities of increasing continuity of membership and length of terms and, at the same time, providing for frequent elections had not been sufficiently explored by American legislative bodies. The staggering of legislative terms was therefore suggested as one way to reconcile these several desirable objectives.

Although no recommendation was made with respect to specific methods by which new legislators might be assisted in preparing for their responsibilities, the committee directed the attention of legislators to presession legislative conferences such as have been held with some regularity in Arkansas, Colorado, Connecticut, Georgia, Massachusetts, and North Carolina. Attention was called to the publication of legislative manuals in 35 states. These booklets describe the organization, rules, procedures, and reference and research aids of legislatures, and they have been found particularly useful in helping new legislators prepare to meet their responsibilities.

4. *Legislative Employees.* Skilled and essential full-time legislative employees should be appointed on the basis of merit and competence. The tenure of key legislative personnel should be unaffected by changes in party control, and as far as circumstances permit, the working conditions of legislative employees generally should not be less advantageous than those of employees in the executive and judicial departments.

Although the committee did not think that employees of the legislature should be appointed on the basis of merit system or civil service rules, it believed that methods should be explored to insure that legislative employees, however appointed, should be honest and competent, and should enjoy reasonable security of tenure. The application of scientific personnel administration with respect to legislative positions was viewed sympathetically, and the committee believed that in so far as possible the compensation and work conditions of employees in the legislative branch should not be less favorable than those obtaining elsewhere in state government. With respect to all questions concerning legislative employees, however, the committee kept in view the need for "closest confidence and coöperation between the legislator and his assistants," and emphasized that "adequate and competent service should be secured by methods which do not unduly restrict the legislator's choice of persons who are to work with him."[4]

5. *Legislative Committees—Organization and Procedure.* Committees should be reduced in number wherever practicable and organized with regard to related subject-matter, equalization of work, and coöperation between legislative houses.

[4] Council of State Governments, Committee on Legislative Processes and Procedures, *Our State Legislatures; Report of the . . .* (Chicago, 1946), p. 8.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Committee meetings should be scheduled and announced so as to prevent conflicting duties for committee members, and a permanent and public record of committee action should be kept.

In the sixteen years since Winslow's study of state legislative committees,[5] little progress has been made in reducing the number of committees so as to be commensurate with the time, energy, and information of individual legislators. A survey in 1946 by the Council of State Governments indicated that senate committees averaged slightly over 32 and house committees slightly less than 40. Although numerous inactive committees may not seriously encumber the legislative process, there is general agreement that the committee system in a majority of the states needs consolidation and reorganization.

The Committee on Legislative Processes and Procedures favored the reorganization of a reduced number of committees around topics of major legislative concern, and in so far as practicable, the provision of equivalent house and senate committees. Substantially equivalent committees not necessarily bearing the same title, nor in all cases having identical jurisdiction, will greatly facilitate joint legislative hearings, permit economies in the provision of research facilities, and may simplify relations between the legislature and the governor. Systematic administration of the committee system was urged, with schedules of committee meetings established and published so as to be fully available to committee members and to the public. Moreover, the records of committee action should be permanently preserved, so that the disposition of measures by committees and the vote of each committee member on each bill could be a matter of public record. The Committee on Legislative Processes and Procedures did not believe that committees should be required to report all bills, but it agreed that a record of committee non-action upon bills should be reported to the legislature before the close of each legislative session.

6. *Legislative Committees—Public Hearings.* Provision should be made for public hearings on all major bills, and advance notice of hearings should be published and made readily available, giving time and place of hearing and subject-matter of legislation to be heard, and wherever possible indicating the number and title of bills. Rules of procedure by committees governing hearings should likewise be published and made readily available.

A major aspect of the legislative process is the representation of public views. Public hearings on major legislative proposals strengthen and supplement the representative character of legislative assemblies. Public hearings may have an educational value to legislators and to the public at large. Where hearings are properly announced, conducted impartially,

[5] C. I. Winslow, "State Legislative Committees; A Study in Procedure," *Johns Hopkins University Studies in Historical and Political Science*, Series XLIX, No. 2 (Baltimore, 1931).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and testimony and findings made widely available, they add greatly to public confidence in the legislative process.

Although hearings on all bills are held in Connecticut, Massachusetts, Nebraska, Wisconsin, and in the Illinois Senate, the Committee on Legislative Processes and Procedures considered that while hearings on all bills might be desirable, the essential requisite was that there be hearings on those measures of major public concern. In some states, hearings on all bills would diffuse the energy and attention of legislators to the detriment of legislation generally.

The importance of records, transcripts, and unpublished testimony to the legislative history of a bill was recognized by the Committee, and it was recommended that on the completion of hearings all committee papers and records be delivered to the legislative reference library for indexing and preservation. The committee urged that "regular records should be kept of all committee meetings . . . should cover time, place, committee members present and absent, the names of all persons appearing at hearings in favor of or against a measure, whom each represents, and a summarized statement as to the disposition of the measure by the committee in executive session."[6]

7. *Legislative Councils and Interim Committees.* Provision for legislative councils or interim committees with adequate clerical and research facilities deserves serious consideration. These services can be provided most readily and effectively through a legislative reference bureau.

Although at least fifteen states have now established legislative councils or comparable agencies, the original legislative-council idea has been modified considerably as it has spread among the states. In the view of the committee, this adaptation of the council idea to the particular needs of the several states has been as desirable as it has been inevitable. States with long-established interim committee traditions may not need the type of council which has been notably successful in Connecticut, Kansas, and Maryland. There is room for further experiment among the states with councils or committees to provide for the establishment of priorities in the legislative program, to give focus and direction to legislative research activities, and to represent the legislature generally during the interim between regular sessions. The committee commended the council "idea" rather than a particular pattern of organization.

8. *Reference, Research, Bill Drafting, and Statutory Revision Services.* Legislative reference, research, bill drafting, and statutory revision services should be reviewed in each state, and strengthened wherever necessary by improved organization and more adequate staffing and appropriations.

Concomitant to the council idea is the provision of adequate fact-finding —research and technical legislative services of which bill-drafting and

[6] *Our State Legislatures*, p. 10.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

statute revision are particularly important. Although the legislative reference bureau actually antedates the legislative council and is considerably more widespread (32 states now have some form of legislative reference service), states have increasingly established or expanded legislative reference services as primary research agencies for legislative councils or advisory committees.

9. *Introduction of Legislation.* Consideration should be given to limiting by rule the period during a legislative session when new bills may be introduced. Provision should be made for the drafting, filing, and printing of bills before the opening of the session. All bills and important amendments introduced during a session should be printed promptly after introduction, and whenever possible they should be inspected before printing by bill drafters or revision clerks.

Publication of manuals covering the form, style, and grammatical construction of bills is suggested.

Pre-session bill-drafting is provided in at least thirty-two states, and pre-session filing is permitted in Massachusetts, New Hampshire, Vermont, and Nebraska, and has been recommended in New York by the Joint Legislative Committee on Legislative Methods, Practices, Procedures, and Expenditures and in Connecticut by the Legislative Council. Coupled with a limitation by rule on the period during which new bills may be introduced into a legislature, these provisions should go far toward regularizing the flow of measures into the legislature, and should reduce the so-called "jam" of legislation at the close of sessions.

The committee believed that the inspection and printing of bills does not receive adequate attention in most states. With respect to the printing of bills and major amendments, the committee concurred in the view of the Connecticut Legislative Council that "there is no other way in which legislature, press, and the public can be guaranteed prompt and easy access to every proposed measure."[7] In order to encourage better preparation of proposed legislation, the committee suggested the publication of bill-drafting manuals, covering the form, style, and grammatical construction of bills. Arizona, Illinois, Maine, Mississippi, New Jersey, New Mexico, Oregon, Texas, Washington, and Wisconsin have to date prepared or published manuals of this sort.

10. *Legislative Rules.* The rules of legislative houses should be reviewed and revised wherever necessary to expedite legislative procedure, with due regard for adequate deliberation on measures and fairness to minority parties.

Permanent standing committees or a joint committee on legislative organization, rules, and procedure should be established in some form by each legislature.

Recognizing the impracticality of any effort to review the legislative rules of the states generally, the committee urged that the legislative houses of each state regularly reconsider their rules and revise them to

[7] *Report of the Legislative Council, State of Connecticut,* Nov. 16, 1944, p. 9.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

expedite procedure, provide for adequate deliberation, and insure fairness to minority parties.

11. *Legislative Finance.* The legislature should provide for a budget adequate to meet all probable expenditures during a fiscal period. Provision for a fiscal officer responsible for the centralized custody of legislative personnel, payroll, and expenditure records of each house, and the supervision of legislative expenditures, should be considered.

In dealing with problems of legislative finance, the committee drew heavily upon the experience of the New York Joint Legislative Committee which had made similar, but more detailed, recommendations to the New York legislature.[8] The objective of the committee recommendation was to provide order and accountability for legislative fiscal affairs. How the states could best regularize their legislative fiscal activities was left to them to decide, but with the suggestion that a legislative fiscal officer be designated or appointed. It was believed that existing budgetary and accounting machinery within the executive branch might be utilized for this purpose by the legislatures of some states.

12. *Local and Special Legislation.* Consideration and settlement of claims against the state should be delegated to judicial or to administrative agencies, and general, optional, or home-rule legislation should provide positive substitutes for special legislation affecting cities, counties, and other political subdivisions of the states, particularly in matters of purely local concern.

Although Illinois, Michigan, and New York have established courts of claims, and although in several states certain categories of claims may be settled by the attorney-general or secretary of state, most states continue to burden their legislatures with an excessive amount of private legislation. The committee urged the states to delegate this time-consuming function to designated administrative or judicial agencies capable of rendering decisions on merit and making, within reasonable limits, monetary awards.

With respect to local or special legislation, the committee concurred with the Council committee on state-local relations, which has recommended the adoption of general, optional, or home-rule legislation in place of the large volume of law enacted every session in many states specifying in detailed terms the authority and obligations of local government.

Concluding Observations. Although legislative organization and procedure customarily receive more attention among the states than in the federal government, the recent reorganization of Congress has renewed interest and stimulated action in the legislatures of many of the states, and the recent report by a committee of experienced state legislators and

[8] *Interim Report of the New York State Joint Legislative Committee on Legislative Methods, Practices, Procedures, and Expenditures.* Legislative Document (1945) No. 35, pp. 83–99.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

officials should give added impetus and direction. The states have not been afraid to experiment with the structure and operations of their legislative houses, but the accelerated tempo of contemporary life requires that their legislatures more rapidly than ever reorganize themselves to meet a seemingly ever-increasing volume of problems and responsibilities. Problems of legislative organization and procedure are on the agenda of a majority of the 44 state legislatures meeting in regular session during 1947. The report of the committee of the Council of State Governments should be of constructive assistance in the framing and consideration of measures intended to strengthen all legislatures.

LEGISLATIVE REFERENCE SERVICE FOR THE CONGRESS OF THE UNITED STATES

W. BROOKE GRAVES

*Legislative Reference Service, Library of Congress**

Although the Legislative Reference Service in the Library of Congress has existed for a good many years, it was not until 1946 that increased financial support and increased staff made it possible for "L.R.S." to render the service that friends of the legislative reference idea had long felt that it should. Under Section 203 of the Legislative Reorganization Act, the Service was authorized and directed to appoint senior specialists in various fields "to be available for special work with the appropriate committees of Congress, and upon request to advise and assist any committee of either House or any joint committee in the analysis, appraisal, and evaluation of legislative proposals pending before it, or of recommendations submitted to Congress, by the President or any executive agency, and otherwise to assist in furnishing a basis for the proper determination of measures before the committee." The services of such staff members are available also for members of Congress individually.

Before proceeding further with the discussion of the expansion of the Service made possible by recent legislation, it may be desirable to outline the nature of the existing organization, and to indicate briefly the character of the services which it renders. The Legislative Reference Service as a whole is one of the departments of the Library of Congress. It functions under Dr. Ernest S. Griffith, who has been Director since 1940. For administrative purposes, the work has been divided among six different sections, each of which has its own different and peculiar responsibilities. These are: the Congressional Reading Room, and the Federal Law, State Law, Information, General Research, and Advanced Research Sections.

* Dr. Graves is chief of the State Law Section of the Legislative Reference Service. MAN. ED.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The first of these units requires little comment. The Congressional Reading Room is a large and ornate, but rather attractive, room located at the front on the first floor of the main building of the Library, reserved for the servicing of members of Congress, their families, and members of their office staffs. It contains, in addition to a well selected list of standard reference books, a fairly good working library in the general field of the social sciences.

The Federal Law Section is responsible for the publication of a digest of bills introduced and for the indexing and digesting of the acts passed by the Congress and signed by the President. Like all branches of the Legislative Reference Service, this Section is responsible for the answering of Congressional inquiries. These run the gamut from simple inquiries as to the status of individual bills in the legislative process to extensive investigations in order to analyze or trace the development of some particular type of legislation or some particular principle of law, and at times they include the preparation of briefs on questions of constitutionality—in which pros and cons are both considered. This Section also reports in summarized form all public hearings of Congressional committees.

The State Law Section has long been charged with the preparation and publication of the biennial *State Law Index*. The Section is also responsible for preparing summaries or digests of state laws. For several years, these were published in the same volume with the *Index*, but more recently they have been issued in the form of monthly mimeographed pamphlets. The Section receives an increasing number of inquiries from members of Congress, Congressional committees, executive departments and agencies, and other sources; and while many of these can be answered adequately, after a few moments' work, by a telephone call, a good many require extensive research and investigation. Some of the more significant reports have been published either as House or Senate documents, or in mimeographed form in pamphlets issued from time to time by the Council of State Governments, or by the Library itself.

With the beginning of the legislative sessions in 1947 in forty-four states, the Section undertook to render a new service to federal departments and agencies and to the state governments. Under arrangements entered into with the Council of State Governments. the Section receives, with as much dispatch as possible, copies of all bills introduced and all acts passed in each of the state legislatures. The Section then issues daily checklists of bills received and acts passed and, on a basis as nearly current as possible, summaries or digests of the acts passed. Strange as it may seem, this undertaking brings together in one place, for the first time, all available information with regard to pending state legislation.

The Information Section, formerly called the Reference Files Section, has a five-fold responsibility. First in importance is the maintenance and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

servicing of the central reference files of the Service. Reports, periodicals, pamphlets, and all sorts of printed matter pour into this Section, and are searched for material of interest to the research sections. Those items accepted are then classified, clipped, and filed. This is the training ground for new appointees, at the junior-professional level, because here they may acquire, in a short time, a knowledge of the working tools of a specialized research agency. In addition to the files, this Section houses and maintains most of the non-legal indexes of the Service. A recent survey showed that the Service possesses about seventy different indexes. The second function, then, is the use of this material by the Section itself, in the answering of "spot," or short, and relative simple inquiries.

A third function consists of searching for published material which has not been properly designated by the inquirer. Such searches, which are conducted by members of this Section detailed for the purpose, may sometimes run into many hours of seemingly futile endeavor. The Service librarian is responsible for the fourth function—the maintenance of current reference materials for the central book collection. She also acts as liaison officer with other Library departments and divisions. Finally, the Service bibliographer compiles lists of references upon request, and brings to the attention of research specialists new material in the various fields. This person also acts in a liaison capacity with the editors of *Public Affairs Abstracts* and *Public Affairs Bulletins*, in the selection of material for abstracting or for use as source material.

The General Research Section handles the bulk of the ordinary non-legal inquiries received by Legislative Reference. In order to assure a high standard of quality in the reports put out by this Section, two Research Counsels have recently been appointed, one in the field of political science, the other in economics. The first position is filled by Dr. Dorothy Schaffter, the second by Dr. Meyer Jacobstein.

A brief consideration of the Advanced Research Section brings us back to the point from which we started, namely, the expansion of the Legislative Reference Service in connection with and as a part of the program for the reorganization of Congress. Reference has already been made to the authorization of the appointment of senior specialists. The list of such specialists and other new key appointees, at the beginning of the Eightieth Congress, included the following persons:

Bernard Brodie, Senior Specialist in National Defense
John Cobb Cooper, Jr., Air Transport Consultant
Hugh L. Elsbree, Senior Specialist in American Government and Public Administration
Fedele F. Fouri, Senior Specialist in Social Welfare
Ernest McK. Fisher, Housing Consultant
George B. Galloway, Senior Specialist in Legislative Organization and Political Economy

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Emanuel A. Goldenweiser, Senior Specialist in Money and Banking
W. Brooke Graves, Senior Specialist in State Government, and Chief of the State Law Section
Meyer Jacobstein, Economics Research Counsel
Theodore J. Kreps, Senior Specialist in Price Economics
John R. Mahoney, Senior Specialist in Conservation and the Public Domain
Raymond E. Manning, Senior Specialist in Taxation and Fiscal Policy
Gustav Peck, Senior Specialist in Labor
Howard S. Piquet, Senior Specialist in International Trade and Economic Geography
James P. Radigan, Senior Specialist in American Law, and Chief of the Federal Law Section
John K. Rose, Analyst (Geographer)
Dorothy Schaffter, Research Counsel in Political Science and Government
Francis O. Wilcox, Senior Specialist in International Relations

On the members of this staff, which may be supplemented from time to time by additional appointments as the volume of work in a particular field may require, devolves the responsibility for carrying on (or in some cases supervising) research projects of such a character as to require the attention of subject-matter specialists of the highest professional standing. Upon them also devolves the responsibility for providing information and assistance to Congressional committees in either house concerned with problems lying within their particular field of specialization.

Teachers of political science will be especially interested in the policy that has been followed in recruiting for the expanding staff of the Service. The Director has been anxious, not only to meet the immediate need for research assistance, but to meet it by making initial appointments of such a type as will provide, in the future, support of or justification for the agency's promotion policy. In this connection, a considerable number of recent college graduates have been appointed. All of them were social science majors—many of them political science majors—in their respective institutions. All were graduated with honors or with other academic recognition. A partial list of these appointees, together with the names of the institutions in which they were trained, follows:

Dudley Ball, University of Vermont
Miss Angeline M. Bogucki, University of Minnesota
Mrs. Elizabeth M. Boswell, Duke University and New York University
Miss Jean Cochran, Stanford University
Miss Jean Crego, Carleton College
Mrs. Toni E. Cynar, Western Michigan State College
Charles Gellner, University of Southern California
Mrs. Mary B. Harrington, State University of Iowa
Maurice Hellner, University of Southern California
Miss Helen Livingston, University of California at Los Angeles
Mrs. Helen G. Lohm, Wilson College
Miss Maureen McBreen, University of Maryland
Miss Kathryn S. Mills, Vanderbilt University and American University

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Mrs. Anne V. Phillips, Ohio State University
Miss Mary G. Shepard, Shorter College and Baylor University
Miss Margaret L. Stankard, University of Akron
John D. Williams, Stanford University
Miss Ulane Zeeck, West Texas State College

The passage of the La Follette-Monroney Act provides for the Legislative Reference Service a great challenge and a great opportunity. Dr. Luther H. Evans, Librarian of Congress, stated the matter very well on one occasion in these words: "There have," he said, "been many attempts in the past to provide a competent and impartial information service for members of a legislative body, but most of these attempts have, unfortunately, been short-lived. Now for the first time we in the Library of Congress are given the opportunity to demonstrate the possibility of providing such services on a continuing basis to a legislative body which is subject to constant changes in personnel and to frequent changes in party control." Certain it is that the opportunities for professional service of a high caliber on a continuing basis are very great.

But here, as elsewhere, while the opportunities are great, it is also true that they are accompanied by very considerable hazards. The Reorganization Act provides for the more adequate staffing of committees and prohibits the loaning of executive department employees to such committees without specific authorization from the Administrative Committee created by the act. There are many questions which as yet remain unsolved in the working relations between the Legislative Reference Service as a whole, and between the senior specialists in particular, and the staffs of the various Congressional committees. There is no established pattern for such relationships, and it may be a long time before any such pattern will emerge. Perhaps no standardization of such relationships is either possible or desirable.

Membership in the group of senior specialists creates certain problems with regard to personal rights of freedom of speech and of the press. Some types of civic activity are obviously inappropriate for persons so situated; yet restrictions upon personal freedom are likely to prove a bit annoying to individuals, many of whom have long been accustomed to the wide range of freedom commonly enjoyed in academic life. At the same time, the Librarian and the Director of the Service have both taken a straightforward position to the effect that members of the staff should have, and should be permitted to exercise, the utmost freedom to speak and to publish, so long as their activities are not detrimental to the relations between the Library and the Service, on the one hand, and the Congress on the other.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

FOREIGN GOVERNMENT AND POLITICS

POST-WAR MUNICIPAL ELECTIONS IN GREAT BRITAIN

WILLIAM A. ROBSON
London, England

The interest and significance of the postwar municipal elections held in Britain can best be appreciated if they are seen against wartime conditions on the one hand and the reconstruction tasks which confront local authorities on the other.

In England, as elsewhere, local government was designed to promote the arts of peace. But for six years during World War II it was asked to shoulder burdens of the most formidable kind directly connected with the war effort. The decision to make local authorities responsible, under the guidance of the Ministry of Home Security and its regional commissioners, for the complex of functions comprised under civil defense was a momentous one. Never before in Britain or any other country had local authorities been asked to undertake a task of such magnitude and importance as that of providing air-raid shelters, wardens and fire-guard posts in almost every street, gas decontamination centers, light and heavy rescue squads, evacuation schemes, emergency feeding and reception centers for those rendered homeless by enemy air attack, furniture stores, rest homes, a first-aid repair service for houses, and various other items of this kind.

The Ministry of Food placed heavy duties on both local-government officers and councilors in connection with food control and rationing; and local authorities provided cheap restaurants and canteens on a large scale. The Ministry of Fuel and Power drew largely on the resources of municipal administration in appointing local fuel overseers and their staffs for regulating the distribution and consumption of solid and liquid fuel.

The evacuation schemes organized by local authorities in conjunction with the Ministries of Health and Education led to the transfer of millions of mothers and children, the aged, and the sick, from the more vulnerable areas to places of greater safety. The dispersal of munitions workers to the ordnance and aircraft factories located in areas remote from the great urban centers had a similar effect in breaking up established communities, distorting the relationship between demand and resources, and upsetting the entire pattern of municipal services.

Difficult Times. The problem confronting local authorities during these momentous years was not merely that of maintaining normal services under abnormal conditions. They had also to provide abnormal services of an entirely novel kind under conditions of enemy air attack, when death and disaster rained down from the skies. What was at stake, time and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

again, was nothing less than the morale of the civil population on which the issue of the war ultimately depended.

On the whole, the local authorities did remarkably well and fully justified the basic policy of entrusting them with the carrying out of Civil Defense Services. Inevitably there were weak areas and occasional incompetence or corruption; but, broadly speaking, the local authorities and their officers emerged with credit from the ordeal. The only service that had to be transferred temporarily to national control was the fire brigades; and this was done in order to achieve rapidly the uniformity of training and organization, the standardization of equipment, and the unity of command and operation, necessary to enable fire-fighting units to coöperate to the fullest possible extent, and thus be fully available to meet concentrated bombing attacks on widely dispersed targets.

Municipal elections would have been both impractical and inappropriate under such conditions. The people were united locally, no less than nationally, in an inflexible determination to pursue the war to a successful conclusion. They were in no mood to indulge in domestic strife and mutual recrimination on local questions. The outbreak of World War II led to the suspension of electoral conflict between the parties in the government.

An act suspending local elections was passed in October, 1939, and a parliamentary general election was postponed and by-elections were conceded to the nominee of the party to which the former member belonged, though these nominees were challenged frequently by independent candidates or members of the Common Wealth party. Evacuation, absence on military service, and the dispersal of munition workers had rendered the electoral lists hopelessly obsolete.

Municipal elections were therefore suspended during the war for reasons generally accepted at the time. The sitting members of local authorities were continued in office, and casual vacancies caused by death or resignation were filled by co-option. The normal tenure of a councilor is three years. In boroughs, the principle of partial renewal applies, and one-third of the councilors retire each year. This involves an annual election of a similar number of councilors. In the metropolitan boroughs which form the lower tier of authorities in the administrative county of London, and also in the counties and parishes, the system of "rotating thirds" does not apply and the entire council is renewed every third year.

The position in 1945 before the first postwar municipal elections was that, in consequence of suspended elections, the membership of town councils outside the London area consisted of councilors elected in 1936, 1937, and 1938, together with those who had been co-opted in the intervening years. Even this statement does not fully depict the extent to which the local authorities had ceased to represent the vital trend of political opinion, for it takes no account of the aldermen.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The aldermanic element, amounting to a quarter of the whole council (a seventh in the metropolitan boroughs) is elected by the councilors from among their own number or from persons eligible to be councilors. They sit for six years—twice as long as a councilor—and half of them retire every third year. These aldermen participate in the work of the council in exactly the same way as the councilors. They enjoy considerable prestige and often do valuable work, but the method of indirect election clearly makes them less responsive to public opinion and is not in accord with modern democratic ideas. In theory, they provide a means of bringing to the council chamber men and women of exceptional qualifications or merit who are unable or unwilling to secure election. The increase of party organization in local government has led to aldermanic appointnents being controlled more and more on strict party lines by the majority group in power. Sometimes candidates who are defeated at the polls are appointed aldermen. Frequently the older members of the council, who ought to retire from public life, are retained for a further six years by being similarly appointed.

Fresh elections were badly needed and long overdue at the end of the war. Those held in November, 1945, related only to the county, noncounty, and metropolitan boroughs. Those for the remaining types of local authorities (county councils, district councils, and parish councils) took place in the spring, and the recent elections (last November) concerned the resigning third of the municipal boroughs.

Universal Adult Suffrage. In November, 1945, for the first time, municipal elections were held on the basis of universal adult suffrage. Hitherto, the local-government vote had been confined to persons occupying land or premises as owner or tenant, and their husbands or wives residing with them in those premises. This excluded men and women living in furnished rooms, flats, hotels, or boarding houses. Following the report of an all-party conference convened by the Speaker of the House of Commons, the Representation of the People Act, 1945, was passed, which assimilated the local government vote to the parliamentary franchise. This added seven million voters to the local-government electoral roll—a step, as Mr. Herbert Morrison pointed out when he introduced the bill as Home Secretary in the House of Commons, which was "the culminating point in the series of electoral reforms which began with the great Reform Act, 1832."

Only a proportion of each provincial council was renewed, consisting of those councilors who were elected in 1936, together with all the co-optees appointed during the war. It was estimated by Mr. Morrison that about half the councilors would retire under these arrangements. In the metropolitan boroughs, all the councilors retired. One-half of the aldermen retired in all boroughs.

Coming so soon after the general election, the municipal contests of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

November, 1945, inevitably raised the question whether the spectacular swing to the left which occurred in the parliamentary representation was a mere flash in the pan or the result of a deep-seated change in the convictions of the people. Although adequate information concerning the results is not available, owing to the fact that official statistics of local-government elections are unfortunately not published, the broad outcome was a substantial gain for Labor, thus confirming the verdict of public opinion at the general election.

There were 8,806 vacant seats in England, Scotland, and Wales in November, 1945, of which only 2,509 had previously been held by Labor councilors. Labor put into the field 7,815 candidates, of whom 1,187 were women. Some 5,155 Labor candidates contested seats which had formerly been held by councilors of Conservative, Liberal, or Independent views. More than 5,000 Labor candidates sought election for the first time.

In giving the results, we may take first the county boroughs, which comprise the 83 largest and most important cities. Before November, 1945, only the following 15 county borough councils had Labor majorities:

COUNTY BOROUGHS

Labor Councils Prior to Elections of 1945

Barnsley	Merthyr Tydfil	South Shields
Barrow-in-Furness	Norwich	Swansea
Coventry	Rotherham	West Ham
Derby	St. Helens	West Hartlepool
East Ham	Sheffield	Wigan

Of these, West Hartlepool and South Shields were lost to Labor in November, 1945 (South Shields was regained in November, 1946).

Labor Gains in November, 1945, and During 1946

Blackburn	Leicester	Salford
Bradford	Lincoln	Smethwick
Bristol	Manchester†	Southampton
Burnley	Middlesborough	Stoke-on-Trent
Dewsbury†	Newcastle-on-Tyne	Sunderland
Doncaster	Newport	Wakefield
Dudley	Northampton	Walsall†
Gateshead	Nottingham	Warrington
Grimsby†	Oldham	West Bromwich
Hull	Preston	Wolverhampton
Ipswich	Reading	York
Leeds		

† Denotes Labor gains owing to changes in personnel after the elections (due either to aldermanic appointments or to by-elections caused by death or resignation).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Labor Gains After the Elections of November, 1946

Birmingham	Plymouth
Bolton	South Shields
Bury	

After the elections of 1945, Labor was in control of 43 out of 83 county boroughs. In certain towns, it is impossible to define the position more clearly than by saying that Labor is or is not in control, owing to the uncertain influence of Independent councilors. Sometimes Independent councilors are pure Conservatives or Liberals operating under a non-committal name. Elsewhere they may be truly independent and will hold the balance between the other parties, supporting or defeating measures as they think fit. In general, however, Independent members are not sympathetic to Labor.

During the course of 1946, owing to resignation and other changes in personnel, Labor gained control of an additional four county boroughs. These were: Manchester (England's third largest industrial city outside of the metropolis), Grimsby, Dewsbury, and Walsall. After the recent elections of November, 1946, majorities in another five county boroughs were gained by Labor: Birmingham (the largest city in the country after the capital), Bolton, Bury, Plymouth, and South Shields.

Labor now controls 52 out of the 83 county boroughs. In addition, in a number of other important centers, including Cardiff, Croydon, Exeter, Gloucester, Halifax, and West Hartlepool, it is the biggest single party, although it does not command a majority.

We may now take the non-county boroughs. There are 309 of these, ranging from small historic towns such as Honiton in Devonshire, or Tewkesbury in Somerset, to important ports such as Dover and Chatham or engineering centers like Swindon and Loughborough.

Before the election in 1945, non-county boroughs were predominantly Conservative or non-party. Only 23 of them had Labor majorities, and in general Labor was heavily under-represented on their councils. The elections in that year turned the scale in favor of Labor control in a further 47 boroughs, giving a total of 70.

NON-COUNTY BOROUGHS

Labor Councils Prior to Elections of 1945

Barking	Jarrow	Southall
Blyth	Leigh	Swinton and Pendlebury
Crewe	Leyton	Thornaby-on-Tees
Dagenham	Mansfield	Tottenham
Eastleigh	Neath	Walthamstow
Edmonton	Nelson	Willesden
Erith	Pontefract	Workington
Ilkeston	Port Talbot	

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Labor Gains in November, 1945, and During 1946

Accrington	Farnworth	Rochester
Acton	Gillingham	Rowley Regis
Ashton-under-Lyne	Gravesend	Rugby
Banbury†	Hartlepool	Scunthorpe
Barry	Heston & Isleworth	Stalybridge†
Batley	Ilford	Stockton-on-Tees
Bexley	Kettering	Stourbridge†
Bilston	Kidderminster	Swindon
Brentford & Chiswick	King's Lynn	Tipton
Chatham	Llanelly	Wallsend
Chelmsford†	Loughborough	Wednesbury
Colchester	Luton	Wembley
Congleton	Mitcham	Whitehaven
Dartford	Morley	Windsor
Dartmouth	Nuneaton	Wood Green
Dover	Queenborough	Worksop
Eccles	Rawtenstall	

† Denotes Labor gains owing to changes in personnel after the elections (due to aldermanic appointments or to by-elections caused by death or resignation).

Election of November, 1946

Labor Gains	*Labor Losses*
Chesterfield	Chelmsford
Colne	Gravesend
Newcastle-under-Lyne	Llanelly
Oldbury	Rawtonstall
Peterborough	Windsor
Stafford	

During the course of 1946, owing to local changes in personnel, Labor gained control of another three boroughs: Banbury, Chelmsford, and Stourbridge. As a result of the November, 1946, elections, Labor obtained a majority in an additional six boroughs: Chesterfield, Colne, Newcastle-under-Lyne, Oldham, Peterborough, and Stafford. It lost control, however, of five boroughs: Chelmsford (which had a very narrow Labor majority), Gravesend, Llanelly, Rawtenstall, and Windsor.

Despite an increase of over 200 per cent in the number of councils under Labor control, nearly three-quarters of this important group of local authorities are dominated by Conservative, Liberal, or Independent councilors. But Labor increased its strength in a large number of boroughs, and in at least 30 of them secured a foothold on the council for the first time. Margate, for example, now has 11 Labor councilors where previously there were none. Two cathedral towns, Lichfield and Wells, now have Labor representation for the first time.

All told, during the recent elections Labor gained 378 seats in non-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

county boroughs and lost 182, giving a net gain of 196. Compared with the Conservative net gain of four seats, this shows a consolidation of the Labor position.

"*Rotating Thirds.*" The system of "rotating thirds" precludes any change in political control in the early stages of a party's representation on a local authority. It is when the strength of the opposing parties or groups is more evenly matched that a relatively small shift of representation may easily serve to transfer power from one side to the other. The local Labor groups have in a majority of boroughs not yet arrived at this stage. Hence, electoral success in the earlier phase does not show itself in terms of party victories. But at Banbury, Clitheroe, and Kingston-on-Thames, Labor holds exactly half the seats on the council, and it is in an almost similar position at several other towns.

In London, the metropolitan borough councils were reëlected in November, 1945. Prior to the election, 17 out of the 28 metropolitan boroughs had Labor majorities. These retained their majorities, and a further six boroughs swung over from Conservative (Municipal Reform) control, leaving only five Conservative councils.

METROPOLITAN BOROUGHS

Labor Councils Prior to the Elections of November, 1945

Battersea	Fulham	Poplar
Bermondsey	Greenwich	Shoreditch
Bethnal Green	Hackney	Southwark
Camberwell	Hammersmith	Stepney
Deptford	Islington	Woolwich
Finsbury	Lambeth	

Labor Gains in 1945

Holborn	Paddington	Stoke Newington
Lewisham	St. Pancras	Wandsworth

Even in the five Conservative strongholds, there has been an increase in Labor representation with the sole exception of St. Marylebone, where the composition of the council remained unchanged in terms of party strength. Labor gained five seats in Westminster, nine in Chelsea, eight in Hampstead, and six in Kensington—all traditional homes of Conservatism. Taking all of the metropolitan boroughs together, Labor gained 279 seats and lost 18. It won 1,038 out of 1,377 vacant seats and secured 151 out of 223 aldermanic appointments. The Conservatives lost 282 seats and gained three. They secured only 321 seats, compared with a previous total of 600.

The county council is one of the most important units in local govern-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ment. In recent years there has been a tendency to transfer an increasing number of services to the county councils as well as to the county boroughs. The first postwar elections were held in March, 1946.

The London County Council has had a Labor majority since 1934. In 1937, this majority was increased, and in 1946 a record was achieved by a further increase in the Labor seats. This is the first time in the history of the London County Council that the political party in control has increased its majority in two successive elections.

Outside of London, there are 61 county councils. Before the election in 1946, Labor controlled only three of these—Durham, Glamorgan, and Monmouth. The 1946 elections resulted in a Labor majority in an additional six: Derbyshire, Essex, Middlesex, Northumberland, Nottinghamshire, and Yorkshire.

The first postwar urban and rural elections were held in April, 1946. There are 572 urban district councils and 475 rural district councils. Detailed information about the urban and rural elections is incomplete, as returns are not sent in by all the districts. Before the elections in 1946, there were known to be 76 urban district councils with a Labor majority, out of the total of 572.

The results of the 1946 elections (as far as they can be learned from 370 returns out of the 572 districts) show that Labor gained control in an additional 56 urban districts, making a total now of at least 135 councils with a Labor majority.

With regard to the rural district councils, even less detailed information is available. Before the election in 1946, Labor was known to have a majority in only 16. Information on the results of the 1946 election is based on detailed results from only 15 per cent of these rural districts. Of this small percentage, it is known that Labor gained control in an additional five rural councils.

In Scotland, the organization of local government is somewhat different from the English system and the names of local authorities vary. A division between large and small burghs will sufficiently indicate the broad line of demarcation.

LARGE SCOTTISH BURGHS

Labor Councils Prior to the Elections of November, 1945

Clydebank	Motherwell & Wishaw	Rutherglen
Glasgow	Port Glasgow	

Labor Gained in 1945

Aberdeen	Dumbarton	Greenock
Airdrie	Dundee	Kilmarnock
Coatbridge	Dunfermline	Paisley

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Election in November, 1946

Labor Gain: Hamilton.

SMALL SCOTTISH BURGHS

Labor Councils Prior to the Elections of November, 1945

Armadale	Galston	Tranent
Cumnock	Musselburgh	Whitburn
Cowdenbeath	Prestonpans	
Dalkeith	Queensferry South	

Labor Gains in 1945

Bathgate	Fraserburgh	Kilwinning
Buckhaven & Methil	Inverkeithing	Lochgelly
Darvel	Johnstone	Saltcoats
Denny & Dunipace	Kilsyth	Sanquhar

Election in November, 1946

Labor Gains	*Labor Losses*
Bonnyrigg and Lasswade	Musselburgh
Cockenzie and Port Seton	
Fort William	
Irvine	
Loanhead	

From the above list it will be seen that prior to the elections of November, 1945, Labor controlled 15 of the Scottish burghs. After the contest in 1946, at least 41 burgh councils had chosen Labor majorities. In Edinburgh, the Labor group increased its membership from 19 to 27 out of a total council of 69. In numerous small burghs, Labor obtained representation on the council for the first time.

So much for the bare results. They are admittedly unsatisfactory in that they do not provide quantitative information concerning the pre-election and post-election political composition of the authorities. Nor is it certain that they are comprehensive in regard to the non-county boroughs or small burghs. But in general they give a broad indication of the sweeping Labor victories, which largely increased the party membership on councils of all types and which served either to strengthen the Labor group or to give it a majority at the town-hall. The general consistency of the shift in power is remarkable. There are scarcely any compensating Conservative, Liberal or Independent gains.

The relatively low polls at municipal elections is a constant cause of concern to those who care for local government. The following table gives the percentages of voters who exercised their right in November, 1945, to vote in a selected list of typical county and non-county boroughs.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

County Boroughs

Barnsley	74.1	Bath	46.79
Merthyr Tydfil	62.28	Dudley	46.47
Wakefield	56.4	Bootle	45.99
Oldham	52.74	Coventry	44.36
Halifax	51.69	Portsmouth	43.41
Gloucester	51.25	Leeds	43.07
Middlesborough	49.75	Newcastle-on-Tyne	41.62
West Hartlepool	49.75	Brighton	36.36
Eastbourne	48.84	West Ham	28.51
Bradford	47.82		

Non-County Boroughs

Clitheroe (Lancaster.)	74.35	Newark (Nottingham)	48.76
Glastonbury (Somerset)	72.07	Loughborough (Leicester)	48.62
Honiton (Devon)	69.13	Poole (Dorset)	47.99
Morpeth	67.93	Keighley (Yorkshire)	47.92
Ossett (Yorkshire)	66.63	Heston & Isleworth	45.98
Dukenfield (Cheshire)	65.64	Brentford & Chiswick	45.79
Pudsey (Yorkshire)	65.29	Bury St. Edmunds (Suffolk)	45.1
Macclesfield	64.17	Chingford	43.79
Tenby (Pembroke)	63.69	Barking (Essex)	42.69
Conway (Caernarvon)	63.59	Reigate (Surrey)	42.67
Tenterden	62.66	Beverley (Yorkshire)	42.63
Thornaby-on-Tees (Yorkshire)	62.00	Clentenham (Gloucester)	42.06
Wareham (Dorset)	60.91	St. Albans	42.02
Wells	60.23	Folkestone (Kent)	41.66
Hartlepool (Durham)	59.72	Weston-super-Mare (Somerset)	41.63
Liskeard (Cornwall)	58.48	Gasport (Southampton)	38.81
Tewkesbury	57.73	Romford	38.66
Sale	55.82	Worthing (Sussex)	38.6
Stratford-upon-Avon	55.61	Ilford	38.4
Eccles (Lancaster)	55.31	Finchley (Middlesex)	36.75
Blyth (Northumberland)	55.14	Newbury (Berks)	36.54
Swinton & Pendlebury	54.78	Hemel Hempstead (Herts)	36.3
Winchester	54.54	Slough (Bucks)	36.26
Stockton-on-Tees (Durham)	54.51	Hove (Sussex)	35.81
Lewes	52.47	Walthamstow (Essex)	31.81
Windsor	51.46	Dagenham	22.62
Yeovil	50.71		

Municipal elections are usually fought to a considerable extent on local issues. The permeation of local government by the national political parties has not changed the essential interest of the local community in its own affairs; but local questions, such as the extension of this service or the development of that institution, and the ever-troublesome problem of local taxation, tend to be expressed nowadays in terms of the general principles or policies of the parties.

The fundamental question which lay beneath the local issues at the November, 1946, elections was the pattern of reconstruction for Britain.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Agreement had been reached between the parties to the Coalition on educational progress, and the Education Act, 1944, marks a substantial advance. The Beveridge report on social security had been bogged down in party conflict for two years until a compromise at last emerged. In the spheres of housing, town and country planning, public medical services, electricity distribution—all in large measure subjects of local government —the divergence of views between the Conservative and Labor elements, in Parliament and the cabinet, was so wide that it became impossible to arrive at generally acceptable policies. The Coalition Government came near a deadlock on these matters.

The conflict of views between the parties on the social and economic aspects of reconstruction was resolved at the general election by an overwhelming verdict in favor of the more radical and socialistic solutions favored by the Labor party. The nation made it abundantly clear that it wanted a planned Britain.

It was by no means a foregone conclusion that the results of the municipal elections would follow the same trend as that of the parliamentary election. Modern English history provides plenty of examples where local elections have produced diametrically opposed results from those occurring in the preceding parliamentary elections. But on this occasion the voters, both service and civilian, appear definitely to have made up their minds what they wanted.

Series of Relations. There are great advantages to be derived from a similarity of political outlook between the central government and the local authorities. The relations between central and local government have drawn so close that the relationship may be described as a partnership. Strictly speaking, there is not a single relationship covering all functions, but a series of relations applicable to the several services. In this, as in many other spheres of public life, the emerging needs of the moment, rather than any cut-and-dried plan based on abstract principle, have been the guides to action. Hence, as each service developed in turn, new arrangements were devised to enable the central government department concerned to encourage, assist, inspect, audit, criticize, stimulate, supervise, and sometimes control the activities of local authorities.

It would take me far beyond the limits of this article to describe the complex relations existing between the Ministry of Education and the local education authorities; between the Ministry of Transport and the local highway authorities; between the Ministry of Town and Country Planning and the local planning authorities; between the Ministry of Health and the local health and housing authorities; or between the Home Office and the local police authorities. There are many strands in the thread, ranging from grants-in-aid to the approval of administrative proposals, from detailed inspection to the rendering of statistics and accounts,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

from the making of regulations to the holding of local inquiries, from giving consent to raising loans to prescribing qualifications and terms of employment for professional municipal officers; from consent to fees and charges to the approval of plans and development schemes. The sturdy independence and freedom of local authorities to administer their areas is an indubitable fact; but so, too, is the influence, power, and brooding watchfulness of the central government departments.

In education, public health, housing, town and country planning, and highways, the interrelationship of central and local authorities is particularly marked. It would be highly misleading to suggest that a Conservative Minister of Health would necessarily be at loggerheads with towns ruled by Labor councils; or that a Socialist Minister of Education would come into conflict with Conservative local authorities. The system does not work like that at all. If it did, it would soon break down, since at any given moment a large proportion of local authorities are always controlled by councils whose political complexion differs from that of the Government of the day.

Nevertheless, the best results are obtainable when the political outlook of the local authority is in harmony with that of the central government. This is particularly true when a vast program of planning, development, and reconstruction, such as that which now confronts Britain, is under way. Hence, to put the matter at its lowest, the Labor victories at the November elections will lend increased coherence to both central and local administration. The disadvantages of conflicting objectives among the various organs of government are well known to every American student.

Too much emphasis should not, however, be laid on the importance of party politics in the day-to-day work of local government. What has here been said about the intensification of party organization and party conflict in the electoral process and the emergence of party majorities on the local councils should not lead us to overlook or to underestimate the high degree of coöperation for common purposes between councilors and aldermen of all parties or of none.

An outstanding feature of the British scheme of local self-government is the committee system. The main work of a local authority is conducted through a series of committees dealing with health, education, mental deficiency, highways, parks and playgrounds, public assistance, finance, public libraries, art galleries and museums, town and country planning, housing, the police, main drainage, water supply, and many other services. These standing committees are composed of members of the council with a sprinkling of co-opted persons from outside. It is in committee that the main policies are evolved, plans sifted, new developments determined—subject always to approval, revision, or rejection by the council as a whole. The scope and volume of business is so large that the council is tending to

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

become a report-receiving body, concerning itself with the larger problems of over-all direction, policy, and coördination.

Each committee contains members of all the parties on the council, usually in proportion to their respective strength. Every councilor and alderman is a member of several committees and sub-committees. Hence every councilor participates in the actual work of policy-making and executive decision, though the actual administrative and technical implementation is carried out by the paid officials.

This opportunity for participation provides the councilor with an excellent civic experience. It educates him in the actual working of democratic institutions. At the same time, it spreads the responsibility for what is done over all members of the local authority. It is mainly on the larger questions of general policy and expenditure that political differences manifest themselves. In the normal work of committees, members of opposing parties are accustomed to coöperate for agreed purposes to a quite surprising extent. This is due in part to local pride and local patriotism; in part to a realization that the committee system could not work if political differences were allowed to obtrude themselves at every stage. In the council chamber and in the committee-room, men and women of diverse backgrounds and opposing political convictions have learned to work together in a spirit of tolerance and with an underlying unity.

DEMOCRACY AND SOCIALISM IN NEW ZEALAND

LESLIE LIPSON
Swarthmore College

The swing to the left, discernible at present in many countries, has given a new urgency to the old problem of hyphenating the politics of democracy to the economics of socialism. What was in the past mainly a matter of theoretical discussion and parliamentary rhetoric has shifted to the stage of legislative enactment and executive application. It is worth while, therefore, to pay attention to some of the world's smaller states whose experiments over a number of decades are pointers along the path now trodden by larger nations like Britain. One of these smaller communities which has persistently moved in a socialist direction by piecemeal and peaceable methods is New Zealand.

The history of New Zealand as a state organized along Western European lines can count but a little over a hundred years. Just because of its youth, however, this nineteenth-century colony and twentieth-century Dominion has provided from its birth a fertile field for governmental activity. The discovery of New Zealand by Tasman and Cook, and to a large extent the early colonization and settlement by white immigrants,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

were due to public enterprise. The extension of state functions was facilitated from the beginning by the vesting of large tracts of land in the Crown, and was necessitated by the inadequacy of available private capital.

The tendency to amplify the powers of government, though continually operating, has been most marked in three well-defined periods. The first lasted from the middle of the sixties to the middle seventies. In that decade, the telegraph and railroads were inaugurated as public monopolies; the construction of main highways, bridges, and similar works became the responsibility of a state department; the government entered business in competition with private firms by setting up a public trust office and a life insurance agency; and to remove checks upon its power, Parliament abolished the then quasi-federal system and concentrated authority at the center. The second dynamic expansion occurred in the nineties as a political reaction to the serious depression of the eighties. The Liberal-Labor party, which constituted the government continuously from 1891 to 1912, established machinery for conciliation and compulsory arbitration in labor disputes. They attacked the large landowners with steeply graduated taxation and forced them to sell some of their holdings, which were then subdivided by the state into small farms. They extended, through increased central expenditure, such vital social services as public hospitals and schools. They introduced on a non-contributory basis first old-age pensions and later widows' pensions. They purchased some mines and began the retail selling of coal, and opened a state office for the sale of fire insurance. What is more, in the teeth of conservative obstruction they weakened the powers of the Legislative Council, Parliament's upper house, by altering the tenure of its members from life to seven years.

The cumulative result of these pre-1914 developments, together with the subsequent additions during the first World War, the twenties, and the depression, is eloquently told in the official figures of the census and departmental reports of the year 1936. At that date, when the Labor Ministry had been in office for only a few months, of all the wage-earners in the Dominion, the percentage who were paid out of public funds by the central and local governments amounted, respectively, to 11.6 and 9.2. In all, therefore, over one-fifth of the working population were public employees—assuredly a high proportion.

The third spectacular phase of governmental expansionism has lasted for the entire decade since 1936. Its political momentum originated in the leftward popular reaction after five years of economic depression and has latterly been intensified by the urgencies of total war and reconstruction for peace. The Labor party, politically dominant throughout these years, is dedicated to the ultimate objective of socialism. As a means to this end, it favors the extension of state power into any field affected with a public

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

interest. Nor is there any major constitutional obstacle in the way of a determined legislative majority. Until World War II intervened in the unfolding of its domestic program, the Labor Ministry had already initiated a new catalogue of public enterprises amplifying many earlier-established state activities and inaugurating some experiments as yet untried. These may be conveniently sorted out into three types: instances of state ownership and operation, regulation of private undertakings, and extensions of social services.

One of the first of Labor's policies was to take over the Reserve Bank, which had been constituted in the depression on the basis of privately held share capital. Headed by a board of directors appointed by the government, and subject in general to the monetary policy of the minister of finance, this Bank now includes among its duties the issue of currency and loans, the control of credit, and the purchase and sale of coin, bullion, and government securities. Radio broadcasting, formerly vested in an independent board, became the function of an ordinary state department immediately supervised by a member of the cabinet. Into this undertaking, however, the government itself injected a modicum of competition. Alongside of the dignified and high-minded National Broadcasting Service, financed through the licenses of the owners of receiving-sets, there was subsequently organized under the same minister the parallel network of a Commercial Service, financed through advertising and purveying lower-brow entertainment. Labor, moreover, embarked on the novel experiment of broadcasting all the proceedings of the House of Representatives, a practice which, except for a few wartime secret sessions, has been maintained continuously since 1936. The marketing of specified primary products became an additional responsibility of the state. As part of its policy of guaranteeing prices to the farmer, Labor set up a department to market inside New Zealand such foodstuffs as butter, cheese, eggs, honey, and fruit, and to dispose of the exports of dairy produce overseas (principally in Britain). Over and above this list of undertakings, all of them operated as state monopolies, the government further launched an ambitious housing program, though without supplanting private building. Using credit advanced by the Reserve Bank, and letting contracts to private firms, the state has erected and continues to own a large number of houses and flats, which are let to tenants.

The approach to a planned economy was also quickened by extensions of governmental regulation in the sphere left to private enterprise. The compulsory arbitration of labor disputes and the fixing of wage scales by award of an arbitration court are practices which antedated Labor's advent to office. But to these the Labor party, being closely associated with the trade unions and their Federation of Labor, added the new principle of compulsory unionism. Earlier ministries had provided by law for speci-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

fied industries and services to be conducted only under government license. But Labor, keen to develop the Dominion's secondary industries, widened the scope of the law and the coverage of licensed undertakings. What is more, when New Zealand's holdings of overseas funds (especially sterling) were dangerously reduced early in 1939—partly because of considerable state purchasing of machinery for public works and partly through the flight of private capital—exchange control was imposed and simultaneously all imports were subjected to governmental licensing and permit.

Likewise in the domain of social services Labor's record has consisted in broadening previous schemes and adding new ones of its own. Education, which suffered in the depression years from the niggardliness of an economy-minded ministry, received welcome (though still not yet fully adequate) increments in its grants from the exchequer. The school age was extended downwards and upwards, milk was given to the children daily, some new school and university buildings were erected, teachers were paid better salaries, and extra professorial chairs were established in the university. Equally ambitious was the enactment in 1938 of the Social Security Act from which Sir William Beveridge later incorporated certain features into his noteworthy plan for Britain. This act consolidated various piecemeal measures of public assistance introduced in the four preceding decades. Setting out to accomplish a full program of social security from birth to death, it added new classes of benefits, not previously granted, liberalized the qualifying requirements for those benefits that were still subject to means test, and increased the amounts paid out to individual recipients. The act provided also for an old-age pension, starting at sixty, and benefits for unemployment, sickness, orphans, invalidity, widows, and children, all of these being subject to a means test. Benefits not so subject were a universal superannuation, available at sixty-five, as well as medical services for maternity, for treatment in public hospitals, and for visits to or by general practitioners.

Apart from exchange control, import licensing, and the medical benefits for general practitioners' services, all of the measures outlined were brought into being before the election of 1938. When Labor gained its first majority in 1935, the public verdict then represented more a rejection of the preceding right-wing government than an affirmative vote for Labor. But the polling in 1938, which reached the proportions of a landslide for the left, can fairly be called as positive an endorsement of Labor's program as was President Roosevelt's reëlection in 1936 an endorsement of his New Deal. The eruption of war, in which New Zealand was the first of the British Dominions to join with the mother-country's declaration, slowed down the rate of expansion of social services, housing, and the like, but at the same time speeded up the drive towards a planned economy. In

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the process of total mobilization, and in the face of the perils of 1942, the government tightened its hold over agriculture, industry, commerce, and manpower. Except for an ill-consorted and short-lived coalition, the Ministry continued to be of one party. Some of the measures which the Government sought to justify as indispensable wartime expedients, e.g., state management of the coal-mines, were criticized by the Opposition as unwanted advances towards the goal of peacetime socialism. At any rate, when a general election was held in 1943, the Labor party, though weakened by a split on its left and bearing the odium of wartime stringencies, retained its electoral and parliamentary majority. But the voting clearly indicated an ebb from the high-water mark of 1938. The hostility of the rural districts, where Labor had earlier gained nearly half of the votes cast, was now strongly emphasized, and the pro-government majority among civilians in New Zealand was far less decisive than that recorded by servicemen and -women in the forces. Only in the four main cities of the Dominion did the Government continue to predominate.

At the new Parliament's first session in 1944, Labor for the first time was on the defensive and ill at ease. The National party, forming the Opposition, was strengthened in both quantity and quality, and its debating skill began to harass a ministry wherein only three or four members really shone. But the tables were dramatically turned in the session of 1945. The Government had evidently realized that it must recapture the initiative, and recapture it it did. Its program, announced at the opening of Parliament, promised to be full and contentious; and when the war abruptly ended in the Pacific, yet more grist was rapidly flung into the legislative mill. Preparation for reconstruction and for the coming election was the keynote of a session which ranks among the most productive in New Zealand's history.

Of the public acts passed in 1945, there are four which represent significant new instances of state ownership. Having advocated at the Chicago Conference on Civil Aviation in 1944 that there should be international ownership and operation of airways, the government proceeded to nationalize the civilian airways within the Dominion. It has established a New Zealand National Airways Corporation with a board of five members appointed by the Minister of Air and in its general policy subject to his direction. This Corporation, whose capital is provided by the state, has the power to acquire compulsorily the existing aëroplanes and equipment owned by the private company hitherto operating. Henceforth it is to conduct the business of civilian air transport. A roughly analogous organization was set up to manage the linen-flax industry. The growing and processing of linen-flax was instituted by the state during the war, fiber being needed by Britain particularly for the manufacture of parachutes. The Corporation has power to grow and harvest the flax, or

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

arrange for it to be grown, to purchase crops, and to establish and operate factories for processing them. The state finances the Corporation, whose surplus profits, like those of the Airways Corporation, are paid to the public account. The directing board of eight members, however, is differently constituted. Although the Minister of Industries and Commerce controls the general policy, the government has a free hand in choosing two of the directors. The other six must represent various associated interests—two for the linen-flax growers, two for the manufacturers who use the processed fiber, and two for the Corporation's employees. The third case of nationalization was more contentious and more vigorously challenged than either of the former. The Dominion's largest trading bank—the Bank of New Zealand—does about half of the banking business of the country. Earlier legislation, placed on the statute-book by non-Labor ministries, had already obtained for the state one-third of its capital and four of its six directors. Under pressure from the left wing of the party, the Labor government has converted the bank into a purely state enterprise. Compulsorily, but on fair terms, it has acquired the privately held shares and now appoints all of the directors, who must conform to the policy of the Minister of Finance. No disagreement, however, was aroused by a bill to vest in the state a stringent jurisdiction over uranium and the production of atomic energy. All uranium in its natural state—there is little of it in New Zealand—is now the property of the Crown. The minister of mines has power to extract it and to control anyone else who wishes to do so. Experimental work on radio-active substances in the University and elsewhere may be conducted only under specified conditions.

Further governmental regulation of private enterprise appeared on the statute-book in the guise of two brief, yet important, enactments. One was a minimum wage law, setting out prescribed rates to be paid to adult workers over twenty-one. This act overrides existing awards by the Arbitration Court, which has in the past laid down minimum rates for certain classes of workers. The only exceptions for which the new act allows are apprentices and others employed under contract of service for training and instruction. While benign in purpose, the law retains a serious blot which consistently disfigures New Zealand's economic structure. It specifies widely divergent minima for men and women, assigning to the fair sex three-fifths the market value of the unfair. The other piece of legislation, belonging to the same category, was an Employment Act designed, as the preamble says, "to establish a National Employment Service for the purpose of promoting and maintaining full employment." The law establishes a new department under a minister of employment, empowering it to collect information and make statistical surveys of labor trends, to assist workers in finding jobs and employers in finding workers, to operate

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

hostels, to provide a home-aid service, and to appoint advisory councils. Beyond these general objectives, the act is extremely vague as to the principal policies and methods to be pursued. Its clauses deal more with machinery than with substance.

Two further measures of the same session may be described as social services worthwhile in themselves for adoption at any time, but timed for that particular moment because an election was in the offing. In an important amendment to its Social Security Act, the government made the family allowance universal, abolishing the principle of the means test. Under the present scheme, which came into operation in April, 1946, all parents are entitled as of right to receive ten shillings a week for each child under sixteen years of age. Income-tax payers are still granted in respect of their children an exemption from their assessable income. Equally well-intentioned was a Maori Social and Economic Advancement Act, designed to aid the aboriginal race, which having already obtained much help from Labor, is now strongly pro-government in its political sympathies. Broad in scope, the act embraces almost anything that conduces to Maori development, creates a network of Maori committees and tribal executives to be responsible for policy and administration, and authorizes the payment of subsidies from the central exchequer to supplement local and tribal funds.

The political strategy conditioning the legislation of 1945 came out most clearly, however, in the *pièce de résistance* of the whole session: to wit, a change in the Dominion's electoral law. Ever since 1889, New Zealand elections have been conducted under a system originated by the farmers at a time when they were still numerically ascendant and devised to bolster their parliamentary representation against the faster growing cities. The law required that electoral districts be apportioned on the basis of population. But the rural areas—defined as all places where the inhabitants were scattered in units of under 2,000—were accorded a fictitious increment of 28 per cent, with the aid of which the country constituencies were nominally equalized with the urban. In effect, the system operated as a national gerrymander, giving the farmers about four extra seats of the eighty that comprise the House of Representatives. The Labor party, being strong in the cities and weak in the countryside, has now abolished the "country quota," as it was called. What is more, it has provided that districts shall henceforth be apportioned on the basis, not of the total population, but of adults only. This, too, militates against the ruralites, amongst whom the proportion of children to adults is somewhat higher than in the cities. The electoral amendment, it should be added, was bitterly fought by the Opposition at every stage of its passage through Parliament, and the Ministry used all its powers under the standing orders to apply the closure. Both on this and on other legislation, the Govern-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ment encountered some justifiable criticism of its tactics, irrespective of the contents of its program. Many a major bill was introduced late in the session, was debated without adequate opportunity for study, and was jammed through during the rush of the last few weeks. The same tactics were repeated in 1946, when Parliament at the very close of the session hastily made the internal marketing of petroleum a state monopoly.

At the general election of November, 1946, the pattern sketched out in 1943 was continued. Labor lost four seats, and the seventy-six European constituencies were equally divided between the two parties. All four Maori constituencies, however, returned Labor candidates. The government, therefore, stays in office, but on sufferance of the Maori representatives, who hold the balance. Even in the cities, where new electoral districts were created by the reapportionment, the Labor tide again receded. It can reasonably be assumed that if it had not changed the law, the ministry would have fallen. The drift away from Labor may be ascribed to various causes: to the normal swing of the pendulum against those who have been in power for ten years; to Labor's failure to introduce fresh blood in its top ranks; to the revival and liberalizing of the National party; and finally to public irritation at certain shortages and restrictions.

New Zealand will doubtless continue to retain most of the socialistic character to which all of its major parties have in varying degrees contributed; whilst, through the operation of the electoral process and the free play of public criticism, it retains its democratic stamp. The resurgence of the Opposition, so essential to the peaceful alternation between parties, highlights the survival of a democratic dialectic differing from the other dialectics of orthodox Marxian or Hegelian varieties.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

INSTRUCTION AND RESEARCH

TOWARD A MORE INTEGRATED POLITICAL SCIENCE CURRICULUM

LANDON G. ROCKWELL
Williams College

Recent concern with the liberal arts curriculum as evinced by the report of the Harvard committee on *General Education in a Free Society*, Colgate's adoption of a core curriculum, and a thorough reëxamination of their entire educational program by scores of other institutions sharpens the recurrent problem of attempting better integration within the constituent parts of the curriculum. Whenever political scientists, talking shop, lapse into general principles, there is inevitable discussion concerning the nature and focus of political science itself. Much hard thinking has been done on the subject. There is, however, as in every profession where individual specialties are earnestly pursued, a tendency toward intellectual myopia, a tendency to miss, by default rather than consciously, a synoptic view of the subject. This has resulted in a lack of integration, of comprehensive design, of sense of balanced purpose, in many political science curricula.

The miscellany of unrelated, overlapping courses which one sometimes encounters in college or university catalogues, to say nothing of the neglect of important aspects of government, indicates that the political science curriculum has received inadequate analysis. Political scientists who teach are educators as well, and thereby have a dual professional responsibility to present their field of inquiry as an integrated, comprehensive whole, elucidated by specific course offerings. Only thus can political science realize its richest contribution to liberal education as well as to an understanding of the political process within and beyond academic halls.

The recent Harvard report on general education observes that "a general education is distinguished from special education not by subject-matter but in terms of method and outlook, no matter what the field . . . specialism as an educational force has its own limitations; it does not usually provide an insight into general relationships."[1] Political science departments have an obligation to provide insights into general relationships within their discipline, particularly in their undergraduate program. For the function of most political science departments is not primarily to train political scientists, but to educate responsible citizens in understanding the problems of government in contemporary society. Thus the political science curriculum requires a maximum of balanced integration

[1] Report of the Harvard committee, *General Education in a Free Society* (Cambridge, 1945), p. 6.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

if it is to fulfill its proper mission within the context of liberal education.

The lack of integration in the political science curriculum is indicated by the varying conceptions that many political scientists have of their discipline. In professional circles, one hears or reads that political science is primarily the scientific operation of practical politics, that it has nothing or little to do with ethics or philosophy. To quote from a recent article by a prominent scholar: "Political scientists . . . should leave ethics to the philosophers and concern themselves primarily with the description and analysis of political behavior."[2] Others favor the view that political science is largely concerned with the techniques of administration and operations of governmental activities, or with social and economic problems expressed in terms of communal authority. Some consider the realm of ideas and principles to be the focal point of the discipline. A more general conviction is one which holds that political science is fundamentally concerned with power relationships. History offers much to validate this. But the phrase is vague. Even when the ramifications of social and economic power are viewed in relation to the powers of the state exercised on several levels and with reference to different groups, it is questionable whether this approach adequately presents a comprehensive view of government. The experience of the twentieth century has proved that power is a decisive and necessary expedient for the solution of problems, but that there are issues which await more than the sanction of power for their solution. Consent, attitudes of mind, inner convictions, are necessary to supplement power if man is to live in peace and plenty in the one world which he has established but not yet organized.

Another general approach to the problem is the conviction that political science is analysis of the political process. But this, again, is vague, implying different things to different minds. To some, the political process means the day-to-day operations of political institutions and forces throughout the calendar year; to others, it implies broader and more complex matters which may include any or all of the foregoing aspects of the problem of governance. As with most issues of this kind, the truth of the matter probably lies somewhere in a combination of these several conceptions of political science, since the breadth and complexities of the subject require the most comprehensive approach to its problems. To the writer, the conception of political science as an analysis of the political process offers the broadest, and therefore the most satisfactory, view of the discipline, provided that we know what we mean by the phrase.

Political activity is an aspect of human experience. Political science analyzes this experience and speculates concerning it. This is its nexus

[2] William F. Whyte, "A Challenge to Political Scientists," in this REVIEW, Aug., 1943. This thesis was later challenged by John H. Hallowell in an article, "Politics and Ethics," *ibid.*, Aug., 1944.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

with history, for history in its broadest sense is human experience. More specifically, political science analyzes that part of human experience which is and has been concerned with the exercise of authority over the community and the individual and among communities, ostensibly to promote security, order, justice, freedom, and welfare. Political science is thus an analysis of the political process penetrating vertically through the centuries back to the beginnings of organized society and cutting horizontally across the complex components of political authority and desires of any given period, particularly the contemporary one.

This political process which is the subject of analysis by political science, if it is to have meaning, must be considered as including several components which together embrace man's total political experience, each with characteristics which justify its designation as a major constituent of the whole; each, however, so organically related to the other that it loses significance except as it is considered as part of the whole. These components which give the phrase "political process" its meaning can be variously designated and variously elucidated. Basically, it seems to me, they consist of the following categories: (1) political ideas or theories; (2) political institutions—their organization, functions, and operations; (3) political dynamics—parties, pressure groups, propaganda, public opinion, economic, social, and geographic forces; (4) political techniques and administration; (5) jurisprudence. Together, these components constitute the political process, because they include all aspects of man's political experience.

These components or categories should not be regarded as courses of instruction. Rather, the political science curriculum should be constructed so that the specific course offerings would cover the areas embraced by these categories. The components would, of course, be referred to the three levels of government—local, national, and international—and projected in vertical synthesis down through these levels wherever such synthesis is possible. The curriculum would thus be based on a rational design derived from a balanced and definite conception of the political process. The result would be an integrated pattern of courses providing a comprehensive investigation of the political process, leaving no important gaps and offering opportunity for maximum correlation among the fields of political science.

With one possible exception, these components are, of course, traditionally accepted aspects of political science as it has been taught for more than a generation. What is not so traditional is their integration as mutually dependent constituents of the political process which lose much of their significance unless they are considered as interacting parts of a whole.

The first of these components, *political ideas*, is listed first because ideas offer reasons for the political process. In some instances, they are motivat-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ing forces; at least they explain motivating forces. They probably have the greatest survival value and power, for they deal with the great themes of human striving: justice, liberty, consent, equality, toleration, power, authority, security, welfare. And because of this they are basic to any systematic, rational approach to the political process. The realm of theory concerning security and order on a world scale in a supra-national jurisdiction presents, of course, a new and turbulent tributary to the traditional streams of political ideas.

Political institutions would include an examination not only of the organization of political institutions on the local, national, and international levels, but of their operations and functions as well. Such vital matters as legislative-executive relations, the institutional aspects of federalism, intergovernmental relations, and representation, for example, would also fall within this category.

The component *political dynamics* requires an examination of forces in the domestic and international community which are not strictly a part of the fabric of government, but which have a vital effect on its operations and policies. The fields of pressure groups, propaganda, and public opinion would fall within this category; similarly, political parties. Important economic and social forces or trends, and geographic factors particularly with respect to international politics, would also be included as vital aspects of this component. Speculation concerning appropriate functions of government would belong to this component as well as to those of political ideas and institutions, because expansion of governmental functions is induced largely by the impact of economic or social pressures on public policy.

Political techniques could be covered by a course or courses in public administration, planning, and other matters that concern administrative management and analysis.

Finally, *jurisprudence* would embrace courses in constitutional law and interpretation, administrative law, and international law. As the legal and constitutional matrix which gives government its form, limits, and responsibilities, jurisprudence merits the status of a distinctive component of the political process.

It should be emphasized that a given course would not necessarily fall wholly within one of these five categories. The components would be touchstones or guides by which to integrate the political science curriculum into a balanced, comprehensive examination of the political process. For example, a course in international politics would probably cut across all of these categories. It would examine the organization and operation of international political institutions; the particular administrative problems involved; the political dynamics peculiar to international problems such as economic, ethnic, and geographic factors. The rôle of propaganda

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and interest groups would probably be introduced. Discussion of political ideas projected on the international level would further illuminate the problems. Something of the nature and holdings of international law and justice would be considered, although presumably most of this field would be reserved for a course in international law. A course in comparative government, although concerned primarily with the organization and operations of institutions, would elucidate relevant political ideas, dynamics, techniques, and systems of law. In whatever course they might be included, such problems as federalism, legislative-executive relations, legislation, or representation would be expanded through ideas, institutions, dynamics, techniques, and jurisprudence. The working out of political ideas would be observed in each of the other components. As many different lights as possible would thus be thrown on a problem, thereby eliminating many of the shadows.

The component political dynamics might well provide the substance of a specific course in the curriculum. Courses in political parties and public opinion are commonly offered, but there is much to recommend the inclusion of one course in the more general field of political dynamics. Certainly no subject of investigation is more important to the political process than an analysis of pressure groups and the economic and social forces which motivate governmental action. These matters have presented an expanding research area in recent years; they are no less important as a teaching field.

Thus the pattern of courses within a given political science curriculum would be derived from a broad functional breakdown of the political process. The courses themselves would not necessarily be identical with the components suggested above. A specific course may cover any material which can be organized as a unit and which can be given a focal point within the boundaries of the political process. Integration is achieved by drawing upon the several components of the political process for the content of each course and for the methods used in presenting it. An important objective for any course in government is to demonstrate interrelationships. Only by referring the problems encountered in each course to all the relevant components of the political process (and in most cases all of the components will have some relevance) can interrelationships be properly demonstrated. Furthermore, the distribution of courses among the fields of political science should be such that none of the foregoing components of the political process will remain unexamined. In the writer's opinion, political science majors should be required to maintain a proper distribution of courses among these components. This would promote a broad examination of the political process as well as insights into general relationships. The main point is that both the content and presentation of courses should emphasize that every aspect of the political

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

process is the product of ideas and moral climate, of institutional practices, of legal traditions, of social and economic pressures, of power relationships, and that even the beginnings of an adequate grasp of a particular problem cannot be achieved without a constant effort for synthesis and drawing upon peripheral material to illuminate the central task. This, of course, is as much a matter of good teaching as it is a question of what appears in the catalogue.

Two courses based directly on the five components of the political process discussed above (or their equivalents) could well be adapted to introduce and complete a more effective integration. The first course would be the introductory course of the department, offering a broad survey of the political process on an elementary level. It would survey very briefly the main currents of political thought from Plato to the present, particularly as they contribute to the gestation of democratic society on the one hand and of authoritarian organization on the other. It would relate this stream of thought to the development, characteristics, and functions of basic political institutions. It would demonstrate the rôle of political dynamics in contemporary politics and indicate some of the problems involved in the operations of practical politics. It would present principles or questions of political techniques and administration. And finally it would suggest the nature and function of jurisprudence, which gives authority to the state and rights to the individual. A course like this would be difficult to organize. The problem of selectivity and synthesis would tax the keenest minds, and the results would certainly not be accepted with unanimous enthusiasm. But in the writer's opinion it would offer a better introduction to the nature of government than most such courses now provide. Properly organized, it would serve the dual purpose of presenting in broad strokes the substance of political science to potential majors in the department and of offering an effective survey of the political process for those who do not elect a political science major.

The second course would be a seminar for majors, presumably required in the second semester of the last year for the purpose of drawing together in final integration the threads of the previous two years. This seminar would be presented on an advanced level, with a maximum of individual work for each student. A project might well be assigned to each student which would cut across all the components of the political process and require him to demonstrate their integration by his own investigations. Or in lieu of a regular seminar a long paper could be required along the same lines, with frequent conferences with members of the department.

Furthermore, the comprehensive examinations commonly required of seniors in their major field could profitably be adjusted to promote greater integration. Many such examinations tend to be merely comprehensive

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

course examinations. They are frequently not framed with the object of drawing together the main threads of a student's work in his major field. Individual questions generally concern matters exclusively within the boundaries of separate courses. Comprehensive examinations based on a more integrated curriculum would avoid this compartmentalization. For example, a student might be asked to write on a particular function of government. The question would be so framed as to require him to refer to the stream of political thought by which the exercise of this function by public authority is or might be justified. It would call for an analysis of institutional practice with respect to the exercise of this function. Relevant administrative techniques would be discussed. An analysis of the social and economic pressures behind the exercise of this function would be expected, as well as of the evolution of boundaries laid down by constitutional law. Questions would thus be framed so as to cut across the lines of the components of the political process wherever possible, in addition to examining a student on the content of the particular courses he has taken during the preceding two years.

With an introductory course which presents the substance of the political process on some such basis as suggested above, with the main body of the courses examining and probing the several categories of the political process, and with a recapitulation in the form of an advanced seminar, the political science curriculum would move closer to the integration and unifying purpose for which all education and intellectual endeavor strive.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

At Dartmouth College, Professor Robert K. Carr has been granted leave of absence for the spring term to serve as executive secretary to President Truman's Committee on Civil Rights, and Professor Dayton D. McKean has become chairman of the department of political science.

Professor Harold S. Quigley, of the University of Minnesota, has recently returned to the United States from Japan, but continues on leave of absence during the spring quarter. Professor Benjamin E. Lippincott has been granted sabbatical leave for the academic year 1947–48.

Professor Philip W. Ireland has resigned his position as assistant professor at the University of Chicago in order to enter the Foreign Service, with which he has been on duty in the Near East during the last year.

Under the auspices of the Walgreen Foundation, Professor Zechariah Chafee, Jr., of Harvard University, gave a series of lectures, on civil liberties, at the University of Chicago during the winter quarter.

The University of Chicago announces the appointment of Mr.Frederick P. Bartlett as assistant professor of political science. Mr. Bartlett, who had former experience with the New York City Planning Commission, and now is connected with the State Department, will supplement Professor Rex Tugwell's work in planning.

Professor Graham H. Stuart, of Stanford University, addressed the Commonwealth Club of California on January 31 on "The President's Rôle in Foreign Policy." The address was broadcast over Station KLX.

On January 26–28, Professor Robert H. Connery, of Stanford University, led a party of students in American government to Sacramento, where they observed the state government in operation and attended conferences with a number of public administrators.

Dr. William C. Beyer, for many years director of the Philadelphia Bureau of Municipal Research, has resigned his position with the Bureau and has been appointed assistant professor of political science at the University of Pennsylvania. He will teach some of the in-service training courses for local-government officials.

On February 5, Dr. Charles C. Rohlfing, chairman of the Committee on Administrative Personnel of the Third Region of the U. S. Civil Service Commission, conducted a conference at the University of Pennsylvania for college presidents and heads of federal administrative agencies. The

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

conference was designed to effect a better recruitment procedure for channeling college graduates into the federal service.

The late Professor John A. Fairlie, who a year ago made a cash gift of $2,000 to the Endowment Fund of the American Political Science Association, also left the Association a bequest of $5,000 in his will recently probated in Atlanta, Georgia. This final gift from an outstanding member of the Association should be an inspiration to all who are seeking to promote and improve the study of political science. Professor Fairlie also provided in his will a sum of $20,000 to endow a graduate fellowship in political science at the University of Illinois.

Mr. Clarence E. Thurber, graduate student at Stanford University, has accepted a position with the Central Secretariat of the State Department in Washington. His principal duties will be in connection with the U.S.S.R. Committee, but he will also be the Central Secretariat's representative on the Committee on Iran, Turkey, and the Arab States, and on the Interdepartmental Committee on Scientific and Cultural Coöperation.

Butler University announces the following appointments in the department of history and political science: Clement T. Malan, as acting professor; Kenneth J. Deacon, Lewis Gilfoy, Hubert H. Hawkins, Emma Lou Thornbrough, and E. V. Kennedy, as assistant professors; Mary S. Owen and James M. Smith, as instructors; and Russell Curtis, Willard Gambold, and Roscoe Kirkman, as lecturers.

Professor Charles M. Hardin, of the University of Chicago, has received the Distinguished Publication Award of the Farm Economic Association for the best publication for 1946 in the *Journal of Farm Economics*. His paper was entitled "The Bureau of Agricultural Economics Under Fire."

Dr. William L. Taylor, formerly of the Maxwell Graduate School of Citizenship and Public Affairs, Syracuse University, and more recently historian and chief of the Records Analysis Division of the Foreign Economic Administration, Washington, D. C., has been appointed professor and chairman of the department of political science at Dickinson College.

Dr. William H. Young has resigned his assistant professorship at the University of Pennsylvania to accept an associate professorship at the University of Wisconsin, and will assume his new post in June. Visiting members of the political science staff during the coming summer session at Wisconsin will include Professors Andrew E. Nuquist, of the University of Vermont, William O. Farber, of the University of South Dakota, and Leslie Lipson, of Swarthmore College.

During the current semester, the political science club at the University of Wisconsin has been addressed by Dr. Coleman Woodbury, of the Na-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tional Housing Agency; Professor Herman Finer, of the University of Chicago; and Professors Merle Curti and Ray A. Billington, of the history departments of Wisconsin and Northwestern University, respectively.

In the summer session at the University of Minnesota, there will be the following visiting professors in political science: during the first term, Professor Robert J. Harris, of Louisiana State University; during the second term, Professors Charles B. Hagan, of the University of Illinois, Howard Penniman, of Yale University, and Allan F. Saunders, of the University of Hawaii. A feature of the summer session will be an Institute on Russian and Far Eastern Studies. Among participants in the first term will be Professor Lobanov Rostovsky, of the University of Michigan, and Professor G. Nye Steiger, of Simmons College; in the second term, Professors Rostovsky, Waldemar Gurian, of the University of Notre Dame, and John N. Hazard, of Columbia University.

At Marshall College, Professor A. E. Harris has been made chairman of the graduate council.

Dr. Guy E. Horsley has been appointed to an instructorship at Dartmouth College for the spring and summer terms.

Professor G. Bernard Noble, of Reed College, has been granted leave of absence to serve as chief of the Division of Historical Policy Research in the Department of State. The former Division of Research and Publication in the Department has been split into the Division of Historical Policy Research and the Division of Publications. Mr. E. Wilder Spaulding is chief of the latter.

Mr. Charles S. Ascher, of the Office of Housing Expediter in New York, has gone to Paris as a consultant to UNESCO on the development and coördination of its program, especially in the social sciences.

At Rutgers University, Dr. Bennett M. Rich, recently Lieutenant-Colonel in the War Department, has taken charge of the work in municipal government and public administration.

Professor John J. George, of Rutgers University, will offer courses in national government and political parties in the 1947 summer session of Cornell University.

In the reprinted program of the 1946 meeting of the American Political Science Association, in the February issue of the REVIEW, the name "Joseph Bruner" should have been "Joseph Dunner."

Dr. Norman N. Gill, director of the Citizens' Governmental Research Bureau of Milwaukee, is serving as part-time faculty member of the University of Wisconsin, Extension Division in Milwaukee, giving a two-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

semester course on municipal government and administration, with guest lectures by city and county officials. In February, he gave four lectures on local government at the Current Affairs Institute held under the auspices of the Marquette University Alumni Association.

Professor Jerome Hall, of the Indiana University School of Law, presented the third series of Hillman Lectures at Pacific University, Forest Grove, Oregon, March 20, on "The Living Law of Democratic Society."

Dr. Henry G. Hodges, who is engaged in general management consulting under the firm name of Henry G. Hodges Associates, at Dayton, Ohio, has accepted appointment as professor of management at the Army Air Forces School of Technology at Wright Field. Dr. Hodges is continuing his association with the consulting firm.

At the bicentennial convocation of Princeton University on February 22, the degree of doctor of laws was conferred upon Professors William E. Rappard and Edward Mead Earle.

Dr. Lawrence L. Durisch, of the Government Research Staff of the Tennessee Valley Authority, and Professor George W. Spicer, of the University of Virginia, will serve as visiting members of the political science staff at the University of Alabama during the coming summer session.

The Midwest Conference of Political Scientists will hold its first meeting since 1942 at the University of Notre Dame May 2–4. Sessions have been arranged on "The Future of Federalism," "Significant Developments in the Midwest," "Government, Labor, and Business," and "Foreign Policy and International Relations." There will also be a joint session with the Council of Social Studies to discuss "Civic Education."

Early in January, Senator Arthur H. Vandenberg, chairman of the Senate Foreign Relations Committee, announced the appointment of Francis O. Wilcox as chief of staff of the Committee. Dr. Wilcox will retain his post as international relations analyst at the Library of Congress, but will devote full time to the Committee and head up the Committee's professional staff activity under the terms of the Reorganization Act.

Dr. Ruth Eve Shirley Lewis has been appointed instructor in the department of history and political science at the University of Utah.

Lieutenant Commander Walter J. Moberg has returned as dean of North Park College, Chicago, after an absence of two and one-half years in the European Theater, where he acted as commander of the Naval Civil Affairs Group in France following the invasion and later as plans officer in the Office of Naval Adviser in Berlin.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Professor Evron M. Kirkpatrick, of the University of Minnesota, will teach in the 1947 summer school at Yale University, and Professor Earl Latham in the summer session at Harvard University.

Professor Henry von Hasseln has been appointed chairman of the department of history and government at Anderson College, Anderson, South Carolina.

During January, Dr. Robert Strausz-Hupé, of the University of Pennsylvania, visited Indianapolis, St. Louis, Louisville, Nashville, and Birmingham and participated as discussion leader in the regional committee meetings of the Council on Foreign Relations.

At Marshall College, and under the chairmanship of Dr. Conley H. Dillon, the Intergroup Forum (a unit of the National Council of Education program sponsored by the Carnegie Endowment) recently carried out a program on the subject of "Bridging the Gap Between the Social and Physical Sciences in this Atomic Age." Discussion leaders were Dr. R. H. Crist, research chemist of Carbon Carbide and former assistant to Dr Harold C. Urey on the Manhattan Project, and Dr. Paul Hatt, sociologist and statistician, formerly of Ohio State University.

The Bureau of International Relations at the University of Washington has revived its series of dinner symposia discontinued during the war. Professors Harold H. Fisher, of Stanford University, and J. A. St. Clair Sobell, of the University of British Columbia, participated in the first of the new series, under the chairmanship of Professor Charles E. Martin

The School of Social Sciences and Public Welfare of the American University, in coöperation with the Washington Section of the American Political Science Association, will conduct an Institute for Teachers of Government and Administration in Washington for a two-week period beginning June 16. The Institute will afford a selected group of teachers of government and administration an opportunity to study the practical operation of national government, and to meet national leaders for discussion of various problems of government. The program will cover all phases of national affairs and will be designed particularly to meet the needs of those who have not had opportunity during the war years to observe the operations of the national government. Persons interested in attending should communicate with Professor J. W. Manning, 1901 F. Street, N.W., Washington, D. C.

The twenty-third session of the Institute of World Affairs was held at the Mission Inn, Riverside, California, December 8–11. Professor Graham H. Stuart, of Stanford University, acted as director, and Professor James T. Watkins and Dr. Tung-Chi Lin, also of Stanford, served as

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

round table leaders. The general theme of the meeting was "United States Foreign Policy."

Under the editorship of Dr. Laszlo Rodvanyi, of the National University of Mexico, a new quarterly journal has appeared bearing the title *The Social Sciences in Mexico, and News About the Social Sciences in South and Central America.* The journal is published in English and has as its principal purpose to make known to social scientists of other countries the work that is being done in this field in Latin America. Ample space is to be given political science. Subscriptions (at $3.50) may be addressed to the editor at Donato Guerra 1, Desp. 207, Mexico, D. F., Mexico.

A conference on Middle Eastern Affairs, sponsored by the recently established Middle East Institute, and held at Washington February 14–15, was attended by more than one hundred representatives of academic institutions, government agencies, and public bodies. Topics considered included "Oil in the Middle East," "The Rôle of the United States in the Middle East," "Middle East Studies in Graduate and Undergraduate Curricula," and "The Middle East Institute Program." The first issue of the Institute's publication, *The Middle East Journal*, appeared in January.

A number of international conferences are scheduled for the summer of 1947. The following are noted as of interest to political scientists, together with the American representative to whom correspondence may be directed:

Name and Place of Meeting	*Date*	*American Representative*
Eighth International Management Congress Stockholm, Sweden	July 3–8	Mr. Charles H. Hatch, Coördinating Office for U.S.A. Participation, National Management Council, 347 Madison Avenue, New York 17, N. Y.
VII International Congress of Local Authorities Paris, France	July 7–12	Mr. Earl D. Mallery, Sec'y, American Committee for the International Union of Local Authorities, 1313 East 60th Street, Chicago 37, Ill.
International Congress on Administrative Sciences Berne, Switzerland	July 22–30	Mr. Leonard D. White (Chairman, American Section, International Institute of Administrative Sciences), Department of Political Science, University of Chicago, Chicago 37, Ill.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

International Exposition of Urbanism and Housing Paris, France	June 1-July 15	Mr. Walter H. Blucher, American Society of Planning Officials, 1313 East 60th Street, Chicago 37, Ill.

The International Congress of Documentation also will meet in Switzerland August 25–30.

Harold D. Smith. By the prescriptive right that was his because he wore the uniform of a sailor in the United States Navy in World War I, Harold Dewey Smith lies in a grave in Arlington National Cemetery on the historic heights overlooking the capital of the nation and the country and the people he served so valiantly in times of even greater danger, not as a sailor, not as a soldier, but wisely and well as a principal public administrator of the Republic. His life was short. He was not yet forty-nine years old. He had barely passed the age when most men of affairs, public or private, only begin the determinative decades of their lives, only begin to reap the earliest fruits of what they have planted in thought and travail, only begin to mount the plateau of maturity from which the better ones, the greater ones, may find the way and the means whereby to ascend the peaks of achievement. Yet cut off thus early and so tragically, Harold Smith already had limned his name in bold letters carved deep in the tablets of his time.

His career was as classically American as he himself was an American, and the very recording of its steps and phases should serve as an inspiration to young Americans who love their fellowmen, as will certainly, in time to come, the detailed and definitive story of his life which will concern and inspire some historian, some biographer, some political scientist, some public administrator, or all of them in concert.

Of his father and his mother, I know little except that they lived in Kansas, and that he once said to me quite casually that they had a deep interest in public affairs. That they were moved by patriotic impulses is manifest in the middle name that they gave to the son, who was born on June 6, 1898, just a few days after Admiral Dewey destroyed the Spanish fleet in Manila Harbor. The boy was to follow Dewey into the Navy in his late teens, and then thereafter to live and work mainly for the public until that bright sunshiny day in January when he was buried with the naval honors of war in Arlington, with the Secretary of the Navy and the President's naval aide there to honor and to mourn him.

There, too, was the Secretary of State, who as Chief of Staff of the Army had worked so closely with him during America's greatest war. There, too, were other members of the cabinet, former members of the cabinet, the former Vice President of the United States, leading members of the Congress, Justices of the Supreme Court, and scores of others great and small

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

who knew him as a man, who admired and worked with him as a public official, and who honored him as a great American.

Self-destined by intellectual choice to be an engineer, self-destined by emotional drive to be a farmer, he found both these careers smothered under the compulsion of a conscience that decreed a life as a public servant. He took his engineering degree, bachelor of science, at the University of Kansas in 1922; but then, as until the end of his days, he never felt that he had learned quite enough about anything. And then, too, because of a girl, Lillian Mayer, he stayed on at the University under John G. Stutz in the headquarters of the League of Kansas Municipalities at Lawrence. It was there and then that I first knew him, when as president of the International City Managers' Association I nominated Mr. Stutz to be its secretary, moved its headquarters to Lawrence, went myself to that little university town, and encountered with the liveliest approbation Mr. Stutz's choice as a student assistant. From that day on, Harold Smith was my friend, my adviser, and at times my confidant as, I like to think, I was his.

In 1923, Smith entered the University of Michigan on a teaching fellowship of $900 arranged by Professor Thomas H. Reed, who had met him at the International City Managers' Association conference in Kansas City some months previous. The next year, his imagination engaged by the possibilities in public administration, he went to Detroit to serve his apprenticeship on the staff of the Detroit Bureau of Municipal Research under the inspiring leadership of Lent D. Upson. At the same time, he completed work for his master's degree in public administration, which he received from the University of Michigan in 1925.

By this time "thoroughly sold," as he would have said, on the importance of municipal government and of municipal administration, he returned to Kansas to work again with the League of Kansas Municipalities and the cluster of similar organizations which John Stutz had collected at Lawrence. This was the time when the state municipal league movement was promising (and paying) great dividends in good government, and it was a "natural" when the Michigan Municipal League was formed in 1928 that Harold Smith should be chosen to be its director. Already Smith had developed his theory of the interdependence of the University and public administration, and in accordance therewith he brought the cities and towns of Michigan into closer relationship with the University than had been possible before they had been organized into a statewide institution. Thus it came about, again as a "natural," that in 1934 Mr. Smith was made director of the Bureau of Government of the University and admitted to its faculty.

During these years, he was not content only to counsel, only to advise; he was also willing to undertake public responsibility. Thus, with no political campaign, he became an elected county commissioner of Washtenaw

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

county and sat in the courthouse at Ann Arbor during the dark days when the deepening depression compelled all public officials to concentrate their attention on relief.

In these times, he became convinced that government in the United States would be good or bad in the degree that it was supported by the coöperation of public administration at all its levels—school district, township, county, state, and federal. This conviction he carried with him through all his days, one of the principal projects which he had in hand at the time of his death being the work of the Council of Intergovernmental Relations of which he was chairman and trustee.

In 1937, Frank Murphy, who as mayor of Detroit had learned to lean on Smith's advice, became governor of Michigan. Governor Murphy appointed Smith budget director of the state. In the next two years, he so demonstrated his ability in budgeting and organization as to attract the attention of Washington; and in April, 1939, President Roosevelt, on the advice of the Secretary of the Treasury, Henry J. Morgenthau, Jr., appointed Smith Director of the Budget. At that date, the Bureau of the Budget was still in the Treasury Department; but plans were already in the making for its expansion and translation into a closer relationship with the chief executive. In September, the Executive Office of the President was created and the Bureau of the Budget removed to it, its responsibilities widened and deepened, and its services expanded.

It was Harold Smith who during the greatest of wars was the prime managerial aide of the chief of the greatest of the states eventually to be embroiled. It was he who served that President and his successor all through that war, through times when defeat threatened, until the victory at arms was recognized as being only the prelude to an even more significant struggle for a victory over dissension, despair, and doubt that would assure a permanent peace.

This is not the time nor the place for an appraisal of Smith's great service as Director of the Bureau of the Budget during these fateful years. Suffice it to say that he presided over the expenditure of a greater amount of money than the operations of the Republic had theretofore cost from its beginning. Suffice it to say that the people never had in such a position of trust an abler or a more devoted or a more successful servant.

One aspect, however, of his work needs to be cited to readers of this REVIEW. Harold Smith brought many a political scientist to the staff of the Bureau of the Budget. But more than any of them he understood the new significance of public administration in our constitutional system, and he saw how that system must depend in the future on a proper balance of the various forces that play on its administrative organization and procedures. In meeting the needs of the war, he was the one who time and again helped the President maintain the essential superiority of the civilian over the military establishment. He was the one who helped the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

President perceive the dangers of letting governmental powers, through administrative devices or procedures, slip into the hands of private interests. He was the one who saw the possibilities of furthering public welfare by aiding the social sciences, as well as the natural sciences, and bringing them into a proper position of influence and usefulness in the federal government and our modern society.

When he left the Bureau of the Budget, he left it for an activity in a still higher level of government. He went to be vice president of the World Bank, a project well within the interest of his last year and a half or two years at the Bureau of the Budget, when above everything his interest was engaged in the organization of the United Nations and its ancillary bodies.

Apt in many phases of public administration, he was especially skillful in two—the choice of persons to help him and using them to the upper limit of their capacity. He was patient and had the ability to suffer fools gladly. He was slow to anger and often banked smoldering fires of indignation behind an impassive mask that would have brought him greater monetary rewards had he devoted it to the great American game of poker. Nevertheless he had capacities for great indignation, righteous indignation, and when aroused knew what to do and how to do it. It was the other fellow's fingers, not his, that were scorched at such fires.

He was deliberate—so deliberate that sometimes he seemed to be slow, too slow. And yet there was something deceptive about this. This deceptiveness was manifest in his walk and carriage. He stooped and leaned forward as if he were straining the great strength of his body into the yoke of a mighty burden. Thus his gait, too, seemed slow; but if one attempted to walk with him the ordinary person had almost to run to keep up with what may only be described as his loping gait.

He had one great fault. He never learned to loaf. He was always working. His only relaxation was to change the kind of work he was doing. If he were not at his public duties, he would be busy with a lathe or a hammer or a saw, making furniture, building a boat, or something of the sort; and if he were not busy with that, he would be at work on the farm. In his last years he was a dirt farmer and found his only relaxation riding a tractor or pitching hay in the hard work of a sweating dirt farmer. He never withdrew his shoulders from the yoke.

He married Lillian Mayer at Lawrence in 1926, and they had five children. She and four of the children survive. It was of her and of them that he thought most and talked oftenest when old friends were about.

What he might have done had he been given the usual span of life, no man may say. But this can be said: Harold Smith made a monument for himself as one of the greatest public administrators in the history of his beloved United States of America.—Louis Brownlow.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

BOOK REVIEWS AND NOTICES

The Myth of the State. By Ernst Cassirer. (New Haven: Yale University Press. 1946. Pp. xii, 303. $3.75.)

The late Professor Cassirer's concern, in this his last book, published posthumously, was the collapse and resuscitation in Western civilization of myth as a bond of social cohesion and a basis for organized activity. He concluded that, while the monster can never be killed, it can and must, for human happiness, be kept in a state of permanent hibernation.

The book is divided into three major sections. The first is an acute study of the nature and function of myth, based largely on critical analysis of various anthropological and psychological theories developed in the last century. It remains largely outside the purely political realm. In tone, it is moderate, undogmatic, reflective, balanced. Its main insistence, repeated again in the conclusion, is that myth pertains to collective social action, is not concerned with the individual, and that it is used as a basis of adjustment to an alien and difficult world where scientific knowledge is not achieved or is not able to bring immediately effective results. The need to explain, and the need to cope with, the world are its bases. It is not used in primitive society in those fields where men possess effective knowledge and techniques.

Part II has as its theme "The Struggle against Myth in the History of Political Theory." This is by no means a complete account, far less a complete history of Western theory. It emphasizes, first, the bond between Greek thinkers in their common struggle against mythical thought, and, second, the special rôle of Plato in creating an architectonic rationalism. It shows how the mediaeval world, starting from the Christian will and faith, ended by the time of Aquinas in the restoration of reason as the support, rather than an enemy, of the Christian *credo*. There follows a lengthy analysis of Machiavelli as the analyst without preconceptions, as scientist of the techniques of statecraft. The seventeenth century, however divergent its political theorists otherwise were, revealed a general concern on the part of social thinkers to discover a scientific theory of society, essentially mathematical in character, and the subsequent eighteenth century was interested in the practical utilization of the resultant rationalism. It was in the nineteenth century that Comteian positivism made the premature profession that a completed science of society had been achieved.

Part III, "The Myth of the Twentieth Century," analyzes the cause of the recurrence of myth in our time. This is attributed to three main thinkers: Carlyle, with his myth of the hero, Gobineau with his myth of race, and Hegel with his myth of the state. None of these intended to contribute to modern totalitarianism; all of them would have deplored the uses made of their doctrines, especially by Nazi Germany.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The conclusion states that the sense of inability to solve problems was the matrix for the rebirth of all-embracing myth in our own day, and of its use by totalitarian, especially Nazi, leadership. Myth was deliberately created and spread; and this was a work of careful planning. It involved especially the creation of a new language and change of the meaning of words, divorced in the process from all referents. Only when myth had been created and effectively sold were specific laws and rules imposed. Myth was the necessary precursor of government and force. In politics, we need to find, but have not yet found, an essentially valid theory with which to combat myth, here at its most dangerous. It is the function of intellect, morality, and art to drive back myth, itself deathless, and bring it into subjection. Only when leadership speaks in the name of these forces can the world emerge and remain in the clear light of day. When these forces weaken, it goes back remorselessly and inevitably into the grey twilight of myth. Gaining a false sense of adjustment and security, its life becomes fundamentally insecure and it faces destruction.

My first criticism concerns, not the theses here stated, but the actual presentation of the work. In the whole of the second section, and to a certain degree in parts of the third, Professor Cassirer apparently forgot his purpose in sheer interest in some of the thinkers discussed. As a result, he wrote essays on them which, while in some instances, as with Plato and Machiavelli, involving brilliant reassessments, were not, in their entirety, strictly germane to his theme. As a result, the work at times lacks coherence and the thesis is hard to follow. Part I and the conclusion could each stand separately, and they could stand together; but neither is intimately connected with Parts II and III.

Secondly, Professor Cassirer's limited selection makes his actual thesis, where it does emerge, appear more convincing than a wider survey of the diverse trends in Western thought, and particularly from the eighteenth century on, would warrant. He undoubtedly has perceived, as in his treatment of the seventeenth century, certain common bonds often forgotten Yet he has seriously missed many other developments, perhaps of equal importance. In particular, I believe that he fails to stress adequately the political consequences, immediate and ultimate, of the Reformation.

A third, though obvious, criticism concerns his somewhat misleading title. As far as the present reviewer can see, Professor Cassirer, save perhaps in his criticism of Hegel's glorification of the state, nowhere argues or implies that the concept of the state is in any sense a myth. Nor does he devote his attention primarily even to theory whose object is to make or unmake such a myth. His work is rather an analysis of two slightly different things: first, rational and scientific thought about the organization of human society and, secondly, rational and mythical techniques of statecraft and the sources on which they draw.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

This brings me to my fourth and final point. Professor Cassirer tends, almost in that spirit of enlightened reason of the eighteenth century he so dearly loved, to see as possible, as well as desirable, within historical time, the triumph of reason over myth. In a sense, he interprets intellectual history itself dualistically. It is a struggle between the powers of light, science, reason, intellect, universalism, and the power of darkness, myth. While he realizes that the attempt to achieve a political-social science has hitherto been premature and ineffective, he does not believe that the undertaking was perhaps misguided. He does not feel, that is to say, that it leads inevitably, as it did in Comte, to intellectualistic and scientific totalitarianism, itself impotent against the totalitarianism of the myth-maker, and so impotent, perhaps, because itself a myth of inferior appeal. He confuses, I think, the two very different issues of scientific analysis of society, as of nature, and the arts of practical government. The former must indeed be undertaken without prejudice on the part of the scientist, himself neither subject to myth nor creator thereof. The latter, even in democratic society, while used to achieve enlightenment by education, must nevertheless be carried on by leadership utilizing, at least within any predictable future, enlightened myth somewhat in the Platonic sense. The myth is indeed social, while rationalism must inevitably be an individual possession, hardly won and hardly held. To get social action and social cohesion until all have been won to that degree of enlightenment necessitates myth. Myth, however, is properly used to lead rather than to mislead, to promote well-being rather than to obtain power and exercise oppression.

- THOMAS I. COOK.

University of Washington.

Grundlinien der antiken Rechts- und Staatsphilosophie. BY ALFRED VERDROSS-DROSSBERG. (Vienna: Springerverlag. 1946. Pp. vii, 174.)

Most authors of works dealing with the political theory of antiquity concentrate on the views and writings of such men as Socrates, Plato, and Aristotle, accompanying or prefacing such analyses with a description of the Greek city-state in order to facilitate an understanding of the circumstances under which these theories originated. Professor Verdross employs a different method, especially in the first half of his book. In his hands, the Greek thinkers become tools through which a most brilliant and vivid picture of ancient Greece is conjured up before the eyes of the reader.

Apart from proving again his distinguished scholarship, Professor Verdross is also a man with a purpose. After having first been suspended by the Nazis, he was eventually readmitted to teaching at the University of Vienna, but relegated to minor courses. In that situation, he concentrated on a course in Greek political theory which he used as a medium

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

by which to demonstrate, by necessary innuendo, the great tradition of liberty and the rule of law from the pre-Platonic thinkers to the Stoics. The manuscript was already finished in 1943, but it could be submitted to the general public only after the end of the Nazi rule. His efforts to prove his thesis, expressed with his customary acumen, are always noble and frequently brilliant—even in the few places where they do not entirely convince the reviewer.

Probably with an eye to the Nazis, he contrasts Athens, the state in which law ruled (*Rechtsstaat*) with Sparta, where law was merely a means to the end of power politics (*Machtstaat*). Athenian law was not merely positive command, but the expression of the social good, the highest interest of the state, which in the general Greek concept is identical with the interest of the individual. It is this ethical concept which, according to Verdross (quoting Pythagoras and Heraclitus) "the gods themselves dare not violate." The true ruler in the state is the law, which is more than positive command; it is that "higher law," that fore-runner of "natural law," which Antigone upholds in Sophocles' great tragedy in defiance of Creon's positive law. This "higher law" is in no way set aside from men or nature, but is a part of nature. Since nature is reason, so law, to be valid, must correspond to a rational idea. With this preparation, it is easy to see how Verdross finds it possible to call Plato's Republic a *Rechtsstaat.* This somewhat surprising result is achieved by identifying the law with the idea of the supreme good which characterizes the *Republic.* Thus, the guardians are not masters of the state, but its shepherds. For the supreme ruler is not the guardian class, not even the philosopher king, but the impersonal idea. This idealistic interpretation is presented with coherent reasoning. Yet the reviewer cannot help wondering whether Verdross' distinction between ideocracy and autocracy is not inconsequential. In its practical application, all government is government by men, and the dictatorship of the idea becomes thus a dictatorship pure and simple.

To Verdross, the *Laws* is not a work of decline and resignation, but on the contrary a work of fulfillment and political wisdom. Being unable to find the proper person for the philosopher-king, Plato proposes the régime of the *Laws*, not as a new, second-best state, but as a second-best method to achieve the best state, i.e., the state of the *Republic.* And Verdross attempts to show, with the help of Plato's letters, that Plato had already conceived the idea expressed in the *Laws* at a time when he was certainly far from broken in spirit by old age and disappointment. Yet, neither Plato nor Verdross furnishes the answer to the cardinal problem which has bedeviled most students of the *Republic* and the *Laws.* Since law, especially Greek law, is primarily a matter of custom, tradition, and experience, how can it ever become that pure, rational art which we meet in the *Republic*? Moreover, if politics is not a pure, intellectual art, how can it be

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

taught in a purely scientific manner? If, on the other hand, it is not a pure science, and if it is not teachable in an entirely scientific manner, then it follows, as Professor Sabine has pointed out so admirably, that very considerable revisions would have to be undertaken in the fundamental concept of the *Republic*.

While the author's excellent treatment of Aristotle follows basically the established groove, he attempts to place Plato and Aristotle more in line with each other than is usually done. Thus, after having attempted to demonstrate that Plato's *Ideenstaat* is identical with the *Rechtsstaat*, he proceeds to show that Aristotle follows very similar concepts; for the rule of "pure, unambitious reason" (*Vernunft*) is similar to Plato's ideocracy. And, like Plato, Aristotle feels that the laws could be dispensed with if only a God-like person could be found whose superior ability and wisdom would enable him to rule as a "law unto himself" (Compare *Laws*, IX, 875, and *Politics*, 1284a).

Finally, in his concluding pages, the author points to the increasingly strong metaphysical tendency which, beginning with *Phaedo*, comes to full bloom in the *Laws* and later has its effect on the Stoics and Cicero.

Apart from outstanding scholarship, Professor Verdross' book is distinguished by clarity and simplicity of language and style, which are not always found in books of a philosophic nature, and which are especially rare in German works. It is regrettable that the tongue in which the book is written will keep all those students away who do not possess a sufficient reading knowledge of German. For here, within the confines of relatively few pages, emerges a brilliant picture of Greek political thought which greatly facilitates a better understanding of the subject.

ROBERT G. NEUMANN.

University of Wisconsin.

Scientific Man vs. Power Politics. BY HANS J. MORGENTHAU. (Chicago: University of Chicago Press. 1946. Pp. x, 246. $3.00.)

This book—to employ a French-like formula which is to that extent symptomatic of the rationalism against which the book so vigorously inveighs—is difficult to understand and, once understood, more difficult to approve. This is a pity; for the little volume appears to be the product of deep sincerity, and the central thesis is in its simplest form probably acceptable to most, if not all, intelligent people. It is the way in which the thesis is developed that causes the trouble; and this by no means involves merely questions of form.

Professor Morgenthau's position is, on the negative side, that the plight in which the world today finds itself cannot hope for a solution from natural science and its method. On the more positive side, he feels that what is needed in domestic and international affairs is wisdom, insight, and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

moral courage. In this there is little with which to find fault. On the other hand, there is more doubt about the proposition that the present uncertain condition of the world is to be blamed on natural science and its method, and about the apparently consequent proposition that absence of wisdom, insight, and moral courage is to be attributed to the same cause. In any event, the propositions do not follow from the thesis. But scientific man having been determined upon as the scapegoat, the author flays about in every direction, associating with scientific man everything of which he disapproves, at least since the dawn of the modern era. For example, all "rationalist philosophy" and all "liberalism" are, without discrimination, condemned as based on faith in natural science. So far as power politics is concerned, singularly little is said about power, except that there is a natural human lust for it concerning which nothing can be done other than to accept it; and about politics the reader is not told much, except that it is essentially, inevitably, and irretrievably evil. The impression is at times difficult to avoid that repeated assertion is regarded as tantamount to logical proof. On the other hand, the pessimistic note and the tragic tone which pervade the little volume have the result that the more obvious grounds for a mildly hopeful attitude are irritably brushed aside. For example, education and reform are mentioned with manifest impatience.

Professor Morgenthau has much to say of "nature." He contends that scientific man, with his rationalist philosophy, is so irrational as to misunderstand the nature of man and the nature of the world, and even to misconceive the nature of reason itself. And yet Professor Morgenthau's use of the term "nature" is throughout highly ambiguous. No doubt he could in this respect claim the company of some of the outstanding figures in the history of political thought, from Aristotle down; but with the modern ones at least he would presumably prefer not to be associated. The ambiguity is none the less there; and this is possibly the most radical defect in his argumentation. Another random example of a shortcoming is the tendency in connection with reciprocal cause and effect to disprove one side of the interrelationship by asserting the other. So far as form and tone are concerned, it seems a pity that Professor Morgenthau is apparently not much concerned with the truism that potential influence is often weakened or destroyed by manner and attitude. Unfortunately, he is often dogmatic, at times supercilious, and not infrequently sneering and flippant.

R. K. Gooch.

University of Virginia.

By Vote of the People. By Willis J. Ballinger (New York: Charles Scribner's Sons. 1946. Pp. xv, 381. $3.00.)

This study is an unadulterated economic interpretation of the rise and fall of democracies. Its thesis is that democracy flourishes only in conjunc-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tion with a "soundly functioning capitalism." Democratic governments originate and thrive when wealth is widely diffused. They deteriorate and collapse when capitalism breaks down as a result of concentration of wealth, elimination of competition, and the consequent failure of private business to carry the employment load. While democratic government is prevented from freeing the repressed "natural productive powers" of capitalism by the oligarchy of wealth, "citizens with votes cannot be permitted to starve." "Government spending becomes a necessity." As a large employer of labor, government then becomes the "only source of subsistence" of many voters; and many business men benefit from government contracts. "If private business remains in depression too long, government spending will increase in volume, and eventually government will seek and obtain complete control over the economic system, with the consent of a people grateful for the economic favors they have received" (p. 23). Thus free governments perish "by vote of the people."

The first half of the book is devoted to showing that this pattern has been the same throughout history. While the author finds no record "of any important free government being destroyed by a revolution," he adduces eight historical instances in six of which the destruction "was accomplished entirely within the framework of the democratic process." The vestiges of Athenian democracy were finally destroyed by Philip of Macedon; and the Third French Republic expired as a result of Hitler's assault. But in Republican Rome, in fifteenth-century Florence, in revolutionary France, and in modern Italy and Germany, the people sold their democratic birthright for a mess of government spending. Venice at the end of the thirteenth century provides a slight variation on the same theme: there democracy succumbed to political trickery.

Though this thesis is highly suggestive, the author's argument from history is too pat. Thus written, history has a made-to-order appearance. The probable effects of other than economic causal factors are not accounted for. Moreover, the author has not actually proved that the variations in form and substance which "capitalism" and "democracy" have manifested at different times and in different places have been inconsequential. Thus he selects from a given confluence of circumstances those that confirm his hypothesis; and when he finds the same combination and sequence present in half a dozen historical situations, he concludes that he has discovered a general historical law.

In the second half of the volume, Mr. Ballinger examines the "highly monopolized industrial structure" of the United States in the light of his historical findings. He concludes that the "broken-down capitalistic system in America, dependent on government spending, will not stand still. Inevitably it will drift toward an authoritarian economy" (p. 219). He berates the New Deal for aiding and abetting this trend by its failure

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to concentrate on eradicating industrial monopoly, by fostering an equally reprehensible labor monopoly, and by its policy of public spending.

The self-assurance with which Mr. Ballinger diagnoses the susceptibility of capitalism to a fatal disease is matched by his confidence in the sovereign remedy that he prescribes. "The way to make capitalism again workable in the United States is to clear away the obstructions to production that have lodged within the system. This means a restoration—not the elimination—of competition as the regulator of trade and commerce" (p. 277). To that end, he urges strenuous enforcement of the antitrust laws and recommends that they be reënforced with heavy personal fines and prison terms for officers of corporations. In addition, he recommends the breaking up of large corporations, the outlawry of the closed shop and the check-off system, and the elimination of discriminatory freight rates and restrictions on interstate commerce. Strangely enough, Mr. Ballinger's economic liberalism does not extend beyond the three-mile limit; with respect to foreign trade, he favors a policy of protection.

Few contemporary political economists have as much confidence as does Mr. Ballinger in the prophylactic qualities of government-enforced competition. Since the threat of monopoly is persistent, the possibility of maintaining competition by government fiat is, to say the least, problematical. Government interference on the required scale would have to have steadfast popular support. It is hard to see whence that would come in sufficient strength, since monopolistic industry and organized labor often have parallel interests in restricting output and in maintaining prices.

HENRY JANZEN.

Pennsylvania State College.

Labor and the Law. By CHARLES O. GREGORY. (New York: W. W. Norton and Company, Inc. 1946. Pp. 467. $5.00.)

For a view of labor relations, you cannot find a more up-to-date, integrated, and readable book than this. Its pages are packed with lively description and commentary. It is a motion picture, with the selections, simplifications, and emphases that an artist producer will make. Gregory's scenario is stimulating and critical.

Though a book of scholarship, it is not a book of reference either for the student or for the practical man. The notes (collected at the back) are merely case citations.[1] The index is sketchy. It is a book written to be read and a book you enjoy reading and pondering—and doubting. It sags when art gives way to morals, especially when Gregory comes at the end to his program of legislative action.

[1] Only one book and two articles are mentioned. The effect is to limit *Labor and the Law* to Gregory's commentary on the court decisions. This enhances its readability, but lessens its value for students.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Since it is a book with a lot of punch, the reviewer must consciously check a desire to dash off in several directions at once, and try to focus comment on what may be helpful to other readers.

"The legislatures should be the sole arbiters of policy in regulating the self-help activities of labor unions" (p. 324). "The development of a uniform labor policy is the peculiar business of Congress alone. It cannot afford to have its prerogative to establish a workable policy of this sort in any way preëmpted by a judicial body" (p. 423). This is the author's chief thesis,[2] in which I feel that he belittles the proper function of courts. He is for complete freedom of action except as limited by statutes. He is against judicial legislation: there is (or should be) on the one hand neither a common law nor a constitutional right to be free from concerted economic pressure (so long as it is decently peaceful and honest) and on the other hand no constitutional right to strike or picket. The legislature should decide; and the courts should respect its decision. They should not contort statutes, as the Supreme Court did by reading Sec. 4 of the Norris-LaGuardia Act as an enlargement of Sec. 20 of the Clayton Act, rather than (as was intended by Congress) a mere curb on the use of the injunction by U. S. courts. The Supreme Court, in applying anti-trust laws to labor (both the early phase of wide application and the present phase of complete non-application wherever there is a labor dispute as defined in the Norris-LaGuardia Act), and in applying the constitutional guaranty of free speech to invalidate statutes limiting labor activity, abused its power of interpretation.

But it is clear that actually the courts have relied on various common-law doctrines to confine labor activities that are thought harmful to the public. One type of curb that Gregory magnifies is against picketing by persons who have no direct economic interest, what he calls "stranger picketing," one of several colorful terms with which he spices his narrative.[3] In the medley of tests and barriers erected in labor cases, some courts, I agree, have said that it is unlawful to enlist the support of friends in a strike or boycott. The old Bucks Stove case[4] under the Sherman Act and the common law case of Auburn Draying Co. v. Wardell[5] are examples. But does anything remain of this today? If any strike tactic is

[2] His hostility to change of law by decision is frequently stated, e.g., p. 91 (common law), p. 98 (equity), p. 349 (constitutional law).

[3] The House of Lords Trilogy (p. 46); the civil rights doctrine (p. 82); pink tea picketing (p. 172). The Supreme Court has done unions "a real disservice in vesting them with the worst curse of modern times—too much power." Unless Congress provides controls over that power, "the grapes of wrath will ferment until the whole keg blows up. And the wine that spills may be bitter to the taste" (p. 288).

[4] 221 U.S. 418 (1911). But contrary to the author's allegation (pp. 172, 338, 345), this doctrine was not relied on in American Steel Foundries v. Tri-City Trades Council, 257 U.S. 184 (1921), which fully upheld all peaceful labor action.

[5] 227 N.Y. (1919).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

protected by the constitutional right of freedom of speech, it is certainly the appeal of a union or an employer for public support in their contest and the peaceful response to that appeal of others. And it should be; it is an informal referendum on the merits of a strike; it is the healthiest sort of popular trial of the issue. Gregory, however, paints a picture in which "stranger picketing" is one of the highlights of common law illegality. I think this a distortion, even as the law existed before picketing began to be called a form of freedom of speech. What all courts, in varying degrees, have condemned, and still condemn, is not picketing and boycotting *by* strangers, but picketing and boycotting *against* strangers—what Justice Frankfurter calls "conscription of neutrals"—not voluntary participation in response to argument, but economic coercion applied to persons not directly related to the controversy. "Stranger picketing" seems to me a legal phantom that once troubled the courts but is now fully dispelled. On the other hand, the policy against *conscription* of strangers and extension of economic pressure to neutral areas has always been strong enough even to limit constitutional freedom of speech in its relation to picketing.[6]

For a lawyer, Gregory is sometimes a little untrustworthy. Thus he tells us that courts may dismiss a case because there is no law applying to the situation (p. 17); a Justice of Massachusetts is "judge" (p. 60), and the Chief Judge of the New York Court of Appeals is "justice" (p. 77); the U. S. Supreme Court consents to review a decision "if it believes from a preliminary investigation that the judgment below was incorrect" (p. 237); the Case bill of 1946 is law (p. 324); the Fifth Amendment assures freedom of speech against congressional encroachment (p. 434); and the burden of proving legislation unconstitutional "is clearly on a court undertaking to declare it invalid" (p. 344). These particular loose expressions hardly clog the main stream of the thought, but other statements, like those about "stranger picketing," seem to me to twist opinions beyond the limits of artistic license;[7] and some cases that seem to me

[6] Brotherhood of Carpenters v. Ritters Cafe, 315 U.S. 722 (1942).

[7] (a) NLRB v. Va. Electric & Power Co., 314 U.S. 476 (1941). At p. 325 and p. 436, the author forgets that what the Court said was that while it was unfair for the employer to coerce employees by threat of disciplinary consequences of disregarding its advice, "neither the Act nor the Board's order here enjoin the employer from expressing its view on labor policies or problems . . . . The employer is as free now as ever to take any side it may choose on this controversial issue."

(b) South Wales Miners' Fed. v. Glamorgan Coal Co. (1905), AC 239, is not a trade-restraint case, as the author implies at p. 430, line 20, but a (dubious) use of the rule against inducing breach of contract.

(c) Lichterman v. Laundry Drivers Union, 204 Minn. 75 (1938), the author at p. 430 transforms from a decision on whether there was a labor dispute (which by parties' stipulation was to determine the judgment) into a decision on the legality of a form of restraint of trade, which it was not.

(d) The anti-racketeering case did not involve the construction of the words

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

importunately relevant are omitted.[8] Certainly other writers would write a different scenario and highlight other episodes. But Gregory has filmed a complex story with masterly skill. He has done a fine job of condensation, with retention of vitality of portrayal. Some of his scenes are brilliant: I would mention particularly his analysis of the opinions in the Apex and Hutcheson cases, and his brief treatments of many NLRA issues.

"Where do we go from here?" is his last chapter. Here, as all the way through, he does not sufficiently insist on the part that agreement must play in the solution of conflict between economic groups. Particularly he goes far in recommending legislation to put anti-trust restraints upon unions. In this matter, as well as those relating to the strengthening of the NLRA system of collective bargaining and the enlargement of the use of arbitration,[9] the precise proposals and arguments of the author are entitled to be read—not digested by a reviewer.

While Gregory's experience as Solicitor of Labor and arbitrator and law teacher assure him a familiarity with the whole field that qualifies him to give weighty "predictions of things to come" and rounded advice for their legal handling, this reader does not feel that his conclusions are inescapable, involving as they do a spate of legislative command. In sum, I would say that Gregory distinguishes himself as the lawyer-artist rather than the lawyer-statesman.

WILLIAM GORHAM RICE, JR.

University of Wisconsin Law School.

---

quoted at p. 425, line 31. The question was whether the situation fell within the statutory exception of "the payment of wages by a bona fide employer to a bona fide employee."

(e) The case of Allen Bradley Local is not described at p. 353, line 9, as the note indicates; nor does it seem to be mentioned at all. The opinion in which the author finds a "pathetic" tone is evidently the Hotel Employees Union case.

[8] Inland Empire Dist. Council v. Millis, 325 U.S. 697 (1945) is not mentioned at p. 252. The line of cases enforcing collective agreements, beginning in 1922 with Robert F. Wagner's famous decision of Schlesinger v. Quinto, 117 N.Y. Misc. 735, are vaguely and slightlingly alluded to at p. 401, line 22, and p. 409, line 10. Here, as elsewhere, enlightening articles are not mentioned. One on collective agreements named in a note at p. 381 has been superseded by better ones, notably by Lenhoff's article on "The Present Status of Collective Contracts in the American Legal System," *Mich. Law Rev.*, Vol. 39, p. 1109 (1941).

[9] He favors general requirement of arbitration of contract disputes (p. 405). He speculates (p. 423) that: "There might with assurance be undertaken the imposition of some sort of compulsory settlement of bargaining disputes in the utility field, much as has been done with the railroads. This procedure might well be extended to include any vital industry or service without the daily functioning of which the health and safety of the community might be jeopardized." (He does not discuss methods—or the constitutionality of methods—of carrying this out.) But otherwise he thinks (p. 388) that "in the absence of a paramount national emergency it is almost impossible to justify government assumption of the collective bargaining function."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The Alien and the Asiatic in American Law. By Milton R. Konvitz. (Ithaca: Cornell University Press. 1946. Pp. xiv, 299. $3.00.)

This is the first volume in the Cornell Studies in Civil Liberty, under the editorship of Robert E. Cushman. Mr. Konvitz has made a unique and much-needed contribution to the literature of public law by undertaking a systematic analysis of the past and present law pertaining to the alien—with particular attention paid to the Asiatic. The rights of the alien to enter and remain in the United States, and to become and remain a citizen, are treated at some length, this material occupying the first half of the book. Thereafter, the alien's economic and social rights, such as the ownership of land, the following of various occupations, and the use of foreign languages, are considered. A final chapter is concerned with the Japanese-American episode in World War II.

In noting the development of the law and in stating its contemporary rules, the emphasis throughout is upon Supreme Court decisions rather than upon statutes and administrative action. The author properly observes that "the will of Congress is known only through the will of the Court" (p. 88); but one wishes that he might have found it possible to give more attention to the rôle of Congress and administrative agencies in the treatment of the alien by our government. Few will quarrel with the verdict that our legal treatment of the stranger in our land has been very bad, even though this verdict is frequently stated in very strong language, as for example in the statement that America's legal rules on the ownership and use of land by aliens "are economically unsound, morally reprehensible, internationally unfortunate, and constitutionally questionable" (p. 170).

But some readers will question whether the Supreme Court must assume as much of the responsibility for the inadequacies of the law pertaining to aliens as Mr. Konvitz insists upon. For example, the argument is not entirely convincing that the Court must take the blame for the exclusion of Asiatics from the privilege of naturalization, even in the face of the continuous presence since 1790 of the adjective *white* in the statutory provisions controlling the granting of citizenship. On the other hand, the attack upon the Court's tendency to follow the *presumption of constitutionality* rule in passing upon the validity of state and federal statutes restricting the rights of aliens is effectively done. It is pointed out that the Holmes-Frankfurter position that unwise and constitutionally dubious legislation should be attacked in the legislative arena rather than in the courts is a dangerous one to follow in dealing with the rights of aliens; for, "The alien, since he does not enjoy the franchise, and suffers under other handicaps as well, has no remedy in the legislature; his only remedy is in the courts. The courts should, therefore, zealously seek to give him the protection that will be commensurate with his need" (p. 218).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

This will be an exceedingly useful book to both lawyers and political scientists, for its analysis of court decisions pertaining to the law of aliens is at all points complete and up to date, and its vigorous criticism of these decisions is continuously challenging.

ROBERT K. CARR.

Dartmouth College.

Congress at the Crossroads. BY GEORGE B. GALLOWAY. (New York: Thomas Y. Crowell Company. 1946. Pp. v, 374. $3.50.)

Books on Congress seem to run in cycles. During the past few years, a half-dozen or more of them have dissected Congress, diagnosed its ailments, and prescribed remedies for restoring its former vigor and effectiveness. In the volume here reviewed, Mr. Galloway is concerned also with improving Congress. This is not surprising because as chairman of the American Political Science Association's standing committee on Congress, and subsequently as staff director of the Joint Committee on the Organization of Congress, he has participated actively in much of the vital investigation—both theoretical and clinical—that preceded the Congressional Reorganization Act of 1946.

This book, however, is more than a laboratory report and blueprint. Although Mr. Galloway describes the Congress which now stands at the crossroads, he also describes the Congress of an earlier era—how it slowly adjusted its organization and methods to changing needs. The evolution from a small, almost intimate, body dealing with the few simple problems of an agrarian economy to the present complex organism confronted with the sharply contrasting conditions of today did not take place in a single step. The record indicates a fairly steady process of Congressional adjustment in the face of increasing complexities, a point worthy of consideration by those who fulminate against the inability of Congress to adapt to new conditions.

After compact, informative chapters on the functions, composition, and machinery of Congress, its steadily increasing tasks and its successive reorganizations to meet new needs, attention is turned to the three basic problems of law-making, administrative oversight, and the two-fold problem of representing and informing the people. The thorny problem of executive-legislative relationships receives special consideration, and an interesting chapter deals with the practical problem of rendering more accessible the various technical services upon which the efficiency of Congress depends.

For those who have followed the activities of the American Political Science Association, the National Planning Association, and the Joint Committee on the Organization of Congress, there is not a great deal that is new in the book, but the author deserves a vote of thanks for the excel-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

lent manner in which he has assembled in one place virtually all of the suggestions—official and unofficial—that have been offered in the cause of improving Congress. Especially useful is the Appendix, which contains several valuable tables providing information not easily accessible elsewhere. For the general reader, the book fills a long-felt need. Written in a style easy and informal, the book invites reading; and reading should bring comprehension, because technical language is either avoided or explained. By showing how Congress reached its present status, by indicating the whole range of suggested reforms, and by stating his own preferences with his reasons for them, Mr. Galloway offers the general reader a firm basis for reaching valid conclusions of his own. It is the temperate, dispassionate yet forthright tone of the book that recommends it so highly for Americans who want to understand their institutions as well as criticize them.

Mr. Galloway's recommendations for a stronger Congress follow patterns made familiar by the reports previously mentioned—with some additions: a constitutional amendment synchronizing the terms of the President, Senate, and House upon a four-year basis, greater emphasis upon joint committees, and abolition of the seniority rule. He believes that selection of committee chairmen by the majority leader in each house might be the best solution. Especial emphasis is placed upon the importance of providing Congress with organs of responsible leadership and of effecting continuous liaison with the President. Majority and minority party policy committees are proposed in preference to more extreme suggestions. It is unfortunate that in the recently passed reorganization act this provision was eliminated after the bill had passed the Senate. Present events once more demonstrate the need for unity in our governmental system. Although it seems doubtful whether any kind of mechanical device can remedy a situation that stems from the nature of our party system, no possible solution should be rejected without trial.

LAWRENCE H. CHAMBERLAIN.

Columbia University.

The Federal Field Service. BY EARL LATHAM. (Chicago: Public Administration Service. 1947. Pp. 70. $1.50.)

The debt of the political science profession to the Committee on Public Administration and the Committee on Government of the Social Science Research Council is substantially increased by the appearance of this interesting and useful monograph. It is, in effect, a new number in the list of excellent research manuals sponsored by these agencies. Professor Latham was assisted in its preparation by William D. Carey, Arthur Svenson, Milton Mandell, and Wallace Sayre.

The monograph consists of an introduction, twelve chapters, and a

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

bibliography. The introduction, written by Professor Latham, is a definition of the federal field service as an area of research. The style is light, but adequate, and reveals the author as one well acquainted not only with the subject under discussion but also with modern American literature. His first concern is to encourage students to look upon the field establishments as worthy of their attention. He points out that ninety-two per cent of the federal (employee) population is to be found in the field, not in agency headquarters. Federal workers now are in as close touch with the public as are local government officers.

Among factors other than mere size which Professor Latham believes justify the federal field service as an appropriate area of study, he lists certain tendencies in research in public administration: "(1) to deal with fragments rather than universals, (2) to mask the flow of process and the interconnections among things under artificial conceptual and verbal constructions, (3) to separate technique and purpose, and (4) to lose sight of the fact that social science is about people." He believes, in addition, that the study of public administration would profit by broader and more systematic inquiry into the relations among administration, politics, and ethics—a belief in which this reviewer heartily concurs.

Three persistent problems of field organization are lucidly described: (1) vertical versus horizontal organization, (2) functional specialism versus administrative generalism, and (3) communications. The transcendent importance of adequate attention to the last of these is stressed, and some hints are given as to possible solutions. This section merits the thoughtful attention of all teachers in our discipline, as well as those administrators who may be in a position to secure action in conformity with the suggestions made.

The first three chapters of the text were written also by Professor Latham. They deal with problems of organization: (1) establishment, (2) hierarchy, (3) areas. Chapters 4, 5, and 6 were prepared initially by William D. Carey of the Bureau of the Budget; and they deal with problems of management: (4) delegation, (5) control and supervision, and (6) integration and coördination. Chapter 7 was written by Arthur Svenson of the Department of Labor; it deals with the field administrative services. Chapter 8, on "Field Problems of Personnel Administration," was prepared by Milton Mandell of the Civil Service Commission. Chapters 9 and 10, which deal respectively with "Field Communications" and "Field Problems of Public Relations," were written by Professor Latham. Chapter 11, on "Field Participation in the Formulation of Policy," is from the pen of Wallace Sayre, then of the Office of Price Administration. The final chapter on "Executive Management and the Federal Field Service," is again by Professor Latham. The outline for each of these chapters was uniform, consisting of three parts: (1) scope of discussion, (2) literature,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and (3) problems of research. The bibliography was prepared by the staff of the library of the federal Bureau of the Budget.

Those charged with responsibility for teaching, conducting research, or directing the efforts of graduate students, as well as public administrators concerned with the problems of central-field office relationships, will find this monograph an interesting mine of useful suggestions.

HARVEY WALKER.

Ohio State University.

Management of the Federal Debt. By CHARLES CORTEZ ABBOTT. (New York: McGraw-Hill Book Company, Inc. 1946. Pp. ix, 194. $2.50.)

This brief study by Professor Abbott represents an endeavor to place in proper perspective some of the major problems resulting from our huge federal debt. Management of the debt is defined as "the choice of debt forms and the proportionate amounts of the different types used, the selection of the pattern of debt maturities, the amounts of debt placed with different classes of holders, the decisions to repay or refund maturing obligations, the refunding terms offered, the treatment given different classes of debt and different types of bond-holders, determination of the provisions attached to new bond issues, adaptation of new issues to the needs of prospective holders, policies pursued in the retirement or creation of new debt, and the relative weights given to all these matters in the government's general fiscal policy." As the author keeps reminding us throughout the volume, it is the magnitude of the debt and the rapidity of its growth which imparts to the decisions on these matters consequences so far-reaching as to affect intimately every portion of the economy.

The study seeks to do the following things: to consider our present problems of debt management as an outgrowth of wartime policies; to point out how debt policies have resulted, as expressed by the author, in "the loss of fiscal controls"; to examine, with the federal debt situation in mind, the present and future rôles of commercial banks, life insurance companies, and savings banks; to outline debt management objectives and ultimate goals of policy. Of special interest to the political scientist is a chapter on debt management and the administration of fiscal policy.

Professor Abbott distinguishes three general approaches to the subject of debt-management. First, there is the Hansen theory which concentrates upon expenditure and views debt management primarily as "a problem of transferring dollars acquired by the government from one set of persons, whether through taxation or borrowing, to another set of persons, the persons who hold claims for interest payments." Second, there is the Leland approach, which views the debt management process as "an independent or semi-independent mechanism at the disposal of fiscal authority for regulating financial and economic matters." The author

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

finds pitfalls and weaknesses in both of these views. He favors, therefore, a third approach which would give "more weight . . . to ways and means of diminishing the influence that the existence of a tremendous debt and particular debt policies necessarily exert upon business decisions made in individual financial and business institutions."

The general tone of the volume is orthodox and pessimistic. Too much reliance cannot be placed upon the governmental process, and the ambitious goals of many current fiscal-policy doctrines are regarded as clearly beyond the limits of administrative feasibility. Specific actions recommended are the placement of as much as possible of the debt on a semi-permanent basis, in the hands of the non-bank public; placement of as much as possible in the hands of strong holders, to keep the floating supply within manageable limits; creation of a free market for some portion of the debt; finally, and of the greatest importance, a reduction in the interest cost of the debt.

In brief, the essence of the author's position is that the only way to lighten the debt burden is through an expanding economy and a rising national income, and that to achieve this goal the maximum possible reliance should be placed on the operations of a free market. Controls therefore, including those involved in debt management, should be held to the irreducible—but necessary—minimum.

This is a provocative study which should stimulate interest in one of our most serious domestic problems. At times the conclusions of the author are stated with more assurance than his analysis warrants, as for example his conclusion (p. 100) on the future rôle of commercial banks. His recommendations on making effective a single integrated fiscal policy are timely. Particularly pertinent, in the reviewer's opinion, is his suggestion for what one might describe as a ministry of finance in which would be concentrated administrative responsibility for the operations of all executive agencies whose duties are primarily of a financial or fiscal character.

MARTIN L. FAUST.

University of Missouri.

The Concentration of Economic Power. By DAVID LYNCH. (New York: Columbia University Press. 1946. Pp. x, 423.)

This book offers a highly useful analysis of the work of one of our great congressional investigations, the Temporary National Economic Committee. In selecting his materials, the author focussed his attention upon the thirty-seven volumes of hearings (17,000 pages) rather than the forty-three special monographs, primarily because "the monographs, unfortunately perhaps, played an unimportant rôle in the final deliberations and recommendations of the Committee." In temper, readability of style,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and interweaving of detail with sharp generalization, the work carries on in the tradition of Lloyd's *Wealth Against Commonwealth*, Fetter's *Masquerade of Monopoly*, and Berle and Means' *Modern Corporation and Private Property*.

In line with the author's finding (p. 356) that the T.N.E.C. contributed little that was new about concentration and imperfect competition in American economic life, apart from charting trends and bringing the record down to 1939, perhaps the principal value of his book for political scientists consists in his exposition of the strategic political and psychological factors involved in mobilizing the instruments of government to deal with over-all problems of structure and control of policy in a private enterprise economy.

The T.N.E.C. was conceived during the sharp business recession of 1937 and terminated during the heightening tempo of the defense program early in 1941. Its existence roughly bridged the period between the end of the New Deal's major legislative reforms and a new phase of industrial activity in which the Administration was no longer in danger from charges of failure to solve the problems of unemployment and lack of business confidence. Back at the end of 1937, however, the newspapers, more than two-thirds of which had opposed Roosevelt in 1936, were freely attributing the recession to the effects of five years of government experimentation and reform. Mr. Lynch shows how the Administration grasped the opportunity, over a period of some four months, to dramatize the connection between private financial-industrial concentration and the responsibility for the crucial decisions affecting the level of purchasing power and employment (identifying "monopoly power" with "unemployment"). The President's message of April 29, 1938, capped this drive by proposing a great national inquiry into the facts of control in economic life, to the end that the nation might decide what it wanted free enterprise, through its government, to do when the system through its own private controls failed to achieve maximum employment of its human and natural resources.

The extent to which the public and Congress had been successfully prepared for action was revealed by the fact that after the issue of legislative vs. executive control of the Committee had been compromised and Senator O'Mahoney had agreed to act as sponsor, the joint resolution authorizing the inquiry went through the legislative mill in three weeks. The T.N.E.C. then faced the problem of keeping its investigation away from witch-hunting and organizing itself for sober research. It started off promisingly with the famous Berle memorandum, postponement of hearings for six months pending completion of its field investigations, interim conferences with business leaders, a sound publicity policy of "fact-finding," and a novel "economics seminar" for the Committee members

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

at the first hearing, conducted by Leon Henderson, Isidor Lubin, and Willard Thorp. Unfortunately thereafter, the disclosures of concentration and control in industry after industry were too successful. The Committee, aided perhaps by the omnibus character of its terms of reference, lost sight of its mission as envisaged by the President's message, and became in its owns eyes almost wholly a "Monopoly Committee," from which it tried to escape by assuming the rôle of an impartial researcher without purpose except to find facts. At any rate, after three years, the Committee's *Final Report and Recommendations* boiled down to a few resolutions recommending procedural improvements in patent administration and budgetary strengthening of the Justice Department's anti-trust division, which were, in the words of Charles A. Beard, a "snap at the heels of business." *Business Week* called the report a "colossal dud." To Mr. Lynch, the Committee's failure lies in its rejection, without analysis, of the Administration's hypothesis that the anti-trust laws were, by themselves, no solution; they represented the negative "policing" aspect of the problem of industrial concentration, to which positive approaches should be sought through programs in the fields of savings and investment, fiscal policy, taxation, public works, social security, and employment relations.

Mr. Lynch finds that five major factors (disregarding the approach of war) explain the inadequate performance of the T.N.E.C. These were: its pluralistic structure (three Representatives, three Senators, and six representatives of executive departments and agencies; the fifty per cent turnover among the Committee members and executive directors; lack of the effective leadership that characterized the insurance (1905), finance banking (1913), and stock market (1933) investigations; the multiplicity of problems accepted by the Committee for study without any unifying policy objective; the disinclination of the Committee to constitute itself a deliberate body to formulate programs or objectives for remedial action. He does not say whether or not any of these obstacles could have been avoided. He leaves the inference clear, however, that, apart from serving as the center of a great forum of discussion and debate, the T.N.E.C. left its job largely undone, to be carried on by the ill-fated National Resources Planning Board, later by the Office of War Mobilization and Reconversion, and again by Congress, beginning with the Full Employment Act of 1945.

AVERY LEISERSON.

University of Chicago.

Cartels In Action. By GEORGE W. STOCKING AND MYRON W. WATKINS. (New York: The Twentieth Century Fund. 1946. Pp. xii, 533. $4.00.)

Controlling World Trade. By EDWARD S. MASON (New York: McGraw-Hill Book Company. 1946. Pp. xvii, 289. $2.50.)

Postwar reconstruction brings again to the fore problems of inter-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

national cartels, viz: Can American business compete with foreign cartels in international markets? Can it withstand their competition in our domestic market? Can American business sell to them (and buy needed materials from them) at reasonable prices? Should Congress permit American business to participate in "supervised" private or intergovernmental cartels? What should be done with German and Japanese cartels now under American control? What should be our policy toward our own cartels, for example, aluminum? Are patent license agreements to be accorded special treatment on the ground that they encourage trade?

Cartels In Action is the first of three volumes prepared by Professors Stocking and Watkins with the aid of a research staff. It is a "case book" containing a factual account of the origin and operation of cartel agreements in eight fields: sugar, rubber, nitrogen, iron and steel, aluminum, magnesium, incandescent electric lamps, and chemicals. A second volume, to appear in a few months, will evaluate methods and economic effects of cartels and will contain conclusions and recommendations. The third and last volume in the series will deal with problems of domestic monopoly.

Of eleven chapters comprising the present volume, Professors Stocking and Watkins devote one chapter each to the eight fields listed above, except chemicals, in which case three chapters are presented. Industries were chosen to show the wide range of economic activities subjected to cartel controls. They were selected also to illustrate diversity of circumstances in which cartels originate, and differences in their power, structure, objectives, methods, and results. The eight fields comprise a representative cross-section of the cartel movement, for example, agricultural products (sugar and rubber), raw materials (nitrates and rubber), intermediate goods (iron and steel, aluminum, magnesium, and chemicals), and finished products (electric lamps). Cartels based on agreements between numerous independent producers whose methods of production vary widely (sugar and nitrates) are presented in contrast with those resting partly on financial connections of a few large enterprises (electric lamps and aluminum). Devices used in the past to make cartels effective included export restriction programs (sugar and rubber) backed by the respective governments and administered by international committees. No direct control over prices was exercised. In contrast, the steel cartel was a complicated federation of enterprises regulating both exports and prices. It employed joint sales agencies and division of territory, and obtained stability in world markets by means of export quotas, with penalties and compensations for over- or under-selling.

Controlling World Trade is the thirteenth in the series of research studies of the Committee for Economic Development. Professor Mason divides his volume into two parts: (1) international business cartels, and (2) intergovernmental commodity agreements. The complexity of both types is

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

admirably stressed, and the methods of their operation through export quotas with or without attendant controls of price, production, and stocks are clearly indicated. Professor Mason defends the thesis that when international controls are necessary they should be intergovernmental in character. He is well aware of the objectionable practice of utilizing government merely as a cloak for the special interests of organized producers. He regards cartels and commodity agreements as tools for postwar international trade, to be employed only where required. His volume is not primarily a "case" study. The conditions giving rise to cartels are treated more briefly, and greater stress is placed upon appraisal of their rôle in the future. Readers will value two sections of recommendations as a contribution to policy discussion in this field. They will also appreciate the author's well integrated treatment and his capacity for critical evaluation. He includes an important chapter of the State Department's "Proposals For Expansion of World Trade and Employment," and his discussion of these proposals at appropriate points in the book is an outstanding feature.

Both volumes are skillfully executed, evidencing professional competence of the highest order. A third should be mentioned here, namely, Charles R. Whittlesley's *National Interest And International Cartels.* Regular readers of the REVIEW may wish to refer to William Y. Elliott's *International Control in The Non-Ferrous Metals,* reviewed in June, 1938, p. 568; Ervin Hexner's *The International Steel Cartel,* reviewed in August, 1943, p. 758; and Wendell Berge's *Cartels: Challenge To A Free World,* reviewed in December, 1944, p. 1240. Attention was also brought to problems in this field by Gunther Reimann's *Patents For Hitler,* and by Borkin and Welsh's *Germany's Master Plan.* Concentration of economic power in the United States, as distinguished from international aspects, is stressed in titles listed in the *American Economic Review* for December, 1946, pp. 938–942. One of the most complete recent bibliographies will be found in *NAM Looks At Cartels,* November, 1946, by the research staff of the National Association of Manufacturers.

EDWARD W. CARTER.

University of Pennsylvania.

Elements of Public Administration. EDITED BY FRITZ MORSTEIN MARX. (New York: Prentice-Hall Incorporated. 1946. Pp. xxiv, 637. $5.00.)

This treatise consists of a series of chapters written by a group,[1] the majority being or having been on the staff of the United States Bureau of

[1] The "team," as the writers call themselves, are James W. Fesler, George A. Graham, V. O. Key, Jr., Avery Leiserson, Milton M. Mandell, Harvey C. Mansfield, John D. Millett, Fritz Morstein Marx, Don K. Price, Henry Reining, Jr., Wallace S. Sayre, Donald C. Stone, John A. Vieg, and Dwight Waldo.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the Budget. Some of the writers also served on the staff of the President's Committee on Administrative Management. It is not surprising, therefore, to find that their views on public management are impregnated with the philosophy of the President's Committee. The necessity for integrating all administrative services in the departmental structure, the conferring on administrative officials of wide discretion unshackled by annoying legislative prescriptions, the relegation of the legislative process to a statement of broad policy and the enacting clause, the exercise of the accounting function by the executive, and the placing of the central personnel agency in the office of the Chief Executive, are considered among the obvious imperatives.

Penetrating chapters on topics not usually included in an elementary text on public administration embrace such subjects as the social function of public administration, planning and administration, informal organization, the essentials of responsibility, and the tasks of middle management and of supervision.

Within the limits of a review, it is possible only to touch briefly upon the contributions of some of the writers. The essential postulates of the social function of public administration, Fritz Morstein Marx states, are "that the service state is democracy brought up-to-date; that the extension of direct and indirect public control aims at the assertion of democracy in the nerve centers of modern industrial society; and that modern industrial society can endure in relative freedom only through such assertion." Dismissing the view of a "conflict between planning and operations," John D. Millett deems planning to be the "first responsibility of management." The task of the planner is to "weigh all possible alternatives" in preparing plans, making it clear, however, that "he is not the official responsible for determining policy," but nevertheless assisting "in showing the grounds which make a program desirable." Harry C. Mansfield and Fritz Morstein Marx discuss "informal organization" in terms of "internal ambiguities" which most organizational charts fail to reveal. The tasks of "middle management," Fritz Morstein Marx and Henry Reining suggest, are concerned with "the most critical sectors of management in large-scale organization"—the "intermediate ranges of command." And Dwight Waldo thinks of government by procedure, not as a complex of statutory regulations, but rather as "the prescribed or customary way of working together in the conduct of an organization's business."

Brief attention is paid to administrative practices on the state and local levels; the illustrations are taken primarily from the national administration. There is an ubiquitous adulation of administrative management and of federal administrators in Washington with the advent of the New Deal, to the extent that both were not stymied by vindictive legislative interference.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

It is as a text-book, however, rather than as a contribution to thinking about public administration, that the book must be finally tested; for the writers dedicate the treatise "to our students, perpetual prompters of thought." In spite of a certain abstruseness and repetitiousness, some evidence that the "team" pulls in opposite directions at times, and an occasional indulgence in verbal pyrotechnics as each writer pursues some facet of management particularly attractive to him, the persistent student will leave the discourse with a clearer insight into a society run by public administrators. Each chapter is divided into headings which will serve as a basis for stimulating class discussions and will assist students in following the thread of the discourse. Furthermore, the teachability of the book is enhanced by the arrangement of the table of contents in the form of topics affording an opportunity to the instructor to develop incisive questions with the end in view of providing a synthesis of the administrative process.

GEDDES W. RUTHERFORD.

Queens College.

Law and Contemporary Problems; International Trade Barriers. By THE DUKE UNIVERSITY SCHOOL OF LAW. (Durham: Duke University Press. Vol. XI, No. 4, Summer-Autumn, 1946. Pp. 219. $1.00.)

Law and Contemporary Problems (Professor Brainerd Currie, editor), published by the Duke University School of Law, has become a highly-regarded journal because of its symposia. Recent issues are devoted to various aspects of enemy property, the financing of small business, and aviation transport; and a wide range of legal, social, economic, and administrative topics and problems have been the concern of this publication since its inception. Subjects are dealt with by authors of special competence. The issue here reviewed is under the special editorship of Professor Elvin R. Latty, and it maintains the high standard of past numbers. It is, indeed, particularly pertinent at this stage of postwar international economic readjustment.

Both from necessity and because of the wish to concentrate on legal framework and other aspects, the present symposium does not develop some of the familiar aspects of and approaches to the broad subject of its title. For example, discussion of the arguments of free trade versus protection is avoided. Taking the view that ("for better or for worse, probably the latter") a return to Manchester liberalism is not in prospect, the editor and authors come to grips principally with trade barriers actually existing, and why; with prospects of further restrictions to be anticipated (especially from nations tending to set up socialized economies); and with what we might call the "practical dynamics" of international trade from the point of view of active business, i.e., rights involved and techniques of meeting restrictions on trade, actual and prospective.

Many of the contributors are practicing lawyers, most of them engaged

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in one way or another in dealing with problems touched upon or exemplified here; but the economics and politics of this large field are well integrated in most cases into the analysis of the legalistics of foreign trade. Special international trade problems constitute the bulk of the articles. There are two contributions, however, which at least in part can be said to focus attention on what may be called "interests," rational processes, "outlook," international morality, etc., as related to the broad problem of national aims and foreign trade. These are the first article, entitled "Analysis of National Aims and Interests in Trade," by Floyd M. Riddick and Joseph W. Romita, of the United States Chamber of Commerce, and the concluding article, by Professor Edwin Borchard, of the Yale Law School, under the somewhat inadequate title of "Protection of Foreign Investments."

Other contributions, with authors, are: "Some Aspects of the Commercial Treaty Program of the United States—Past and Present," by Austin T. Foster; "Restrictive Business Practices in International Trade," by John E. Lockwood and William C. Schmeisser, Jr.; "Cartels as Barriers to International Trade," by Wendell Berge; "Legal Treatment of Foreign and Domestic Creditors," by Kurt H. Nadelmann; "Some Restrictions Abroad Affecting Corporations," by Phanor J. Eder; "Limitations Abroad on Enterprise and Property Acquisition," by Dudley B. Bonsal and Milo A. Borges; "Direct Foreign Investment in Undeveloped Countries: Some Practical Problems," by Alexis Coudert and Asher Lans; "Tax Inducements to Foreign Trade," by Mitchell B. Carroll; "Some American Discriminations Against Foreign Enterprises," by Marcel Singer; "Import and Export Controls," by Kenneth S. Carlston; and "Arbitration in the Settlement of International Trade Disputes," by Morris S. Rosenthal.

J. WILLIAM ROBINSON.

Purdue University.

Making International Law Work. By GEORGE W. KEETON AND GEORGE SCHWARZENBERGER. (London: Stevens and Sons, Limited. Second edition. 1946. Pp. x, 266. 12s.6d.)

The first edition of this book appeared in 1939. In the main, the substance of that edition is retained in the present revision. The principal changes appear to be the consolidation of several chapters dealing with the League of Nations and the inter-war period into a single chapter on "The Failure of the League Experiment"; the addition of two chapters entitled "A New Start" and "The Prospects for International Law," wherein the United Nations Organization and the outlook for international law within the framework of that system are evaluated; and the development of an enlarged and masterfully written final chapter, "The

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Problem Today: National Sovereignty *versus* World Order." The latter is in effect a synthesis of views and conclusions contained in the earlier parts of the book. An index also has been added, and eight international instruments of prime significance, including the UN Charter and the Statute of the International Court of Justice, have been included in appendices.

As regards both style and scholarship, this is a book of high caliber, worthy of favorable comparison with, say, Brierly's *Law of Nations*. It begins with a concise account of the breakdown of the medieval system with its "one-world" conception of a united Christendom, and of its replacement by the modern "society" of sovereign, independent states. In that "society," as distinguished from a "community," the authors assert that self-interest and self-preservation are the fundamental principles governing the relations between states and prompting them to practice power politics. In short, "it is a typical society ultimately governed by the rule of force" (p. 28). Within that framework, international law, posited on the doctrine of state sovereignty, has, except as to certain matters relatively unaffected by the rule of force, actually served as the handmaiden of that rule rather than as a check upon it. The League of Nations, whatever may have been its potentialities, effected no essential changes in the system. And, although embodying certain definite improvements as compared to the League, the United Nations Organization, too, is at best but a piece of "machinery through which nations can build up the habit of coöperation for the peaceful development of the earth" (p. 179). Thus, even now, "the foundations of international law remain as dubious as they ever were, unless comfort is derived from the decreasing numbers of really sovereign states or from the increase in the destructive powers wielded by the super-Leviathans" (p. 121).

For the authors, the only satisfactory solution to the problem posed in their title is, therefore, to abolish international law and to replace it with the municipal law of a federal system of world government. "There must be merged in a world government that part of the sovereignty of every state which entails control over weapons of war and the conduct of its foreign policy. We must contemplate nothing less than the establishment of a world legislature, directly responsible to the peoples of the world, a world police, a world judiciary—and a world law. . . . And the time in which these changes must be achieved is short" (p. 176).

That law and sovereignty are incompatible, and that world government is, *logically,* the only possible basis for a real world order based upon law, are views certainly no longer regarded as heretical—even among practicing statesmen. Nevertheless, sovereignty is not a mere unfortunate fiction of the law to be readily swept aside by force of logic alone. It is, rather, an expression in law of attitudes and sentiments deeply rooted in the minds

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and prejudices of peoples. This Keeton and Schwarzenberger plainly recognize when they assert that "the habit of coöperation itself involves a change in national attitudes toward world problems, and in the last resort changed national attitudes involve corresponding changes in individual attitudes toward world problems" (p. 179). How is that change to be wrought? Their answer is, by "an educational process" (p. 179); and undoubtedly their book is a valuable contribution to that process. The authors do not, however, make clear how that process can successfully operate when, in large parts of the world, the free exchange of ideas is not permitted. Nor do they suggest means for reconciling the inevitably slow process of education with the need for haste which they assert has been imposed by scientific developments in the field of atomic energy.

VALENTINE JOBST, III.

University of Illinois.

Where Are We Heading? BY SUMNER WELLES. (New York: Harper and Brothers. 1946. Pp. 397. $3.00.)

There are few persons more competent than Sumner Welles to write a survey of current American foreign policy. His training, his experience, his knowledge and sense of history, his grasp of fundamental values, his coldly logical mind, his restraint and objectivity in critical judgment—these qualities have made it possible for him to produce in this book one of the very best critical accounts of recent and current developments in our foreign policy. In seven chapters, he deals with the general progress toward world order, the problems and methods of peacemaking, European reconstruction, relations with Latin America, the clashes in the Near East, the upsurge of nationalism in Asia, and a general summary of our achievements and failures in foreign policy. Altogether, the book is an admirable supplement to his *The Time for Decision*, published in 1944.

With respect to the development of the United Nations, Mr. Welles gives a detailed account of events, beginning with the story of the Atlantic Charter. In this account he reveals a good deal not generally known about the attitude of President Roosevelt and about the procedure and policies of the American government, particularly of the State Department, in the gradual formulation of an American version of a world organization, and in the final drafting of the Charter at San Francisco. The active preparations began in April, 1942; they were under the immediate direction of Welles as under-secretary, although later Hull himself took the chair at some committee meetings; the spadework of collecting and analyzing information, preparing memoranda, and formulating tentative proposals was done by a fairly large secretariat, some loaned by the Council on Foreign Relations, many recruited from the universities (economists, historians, geographers, political scientists), a few from the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

permanent rolls of the State Department and other agencies; subcommittees examined these memoranda and proposals, and prepared plans of organization; top committees in turn reviewed these plans, formulated policies, and approved the final drafts.

The problems were approached along three lines—those relating to the peace settlements, those relating to economic and financial policy, and those relating to international organization and security; and it was with this last group that Welles himself was most active and most continuously associated. Probably his most notable achievement was quietly to bring into this preparatory work the leading members, representing both political parties, of the Senate and House Committees on Foreign Relations and Foreign Affairs—"Welles' Sunday school class," as the newspaper men called it when they learned about it. At an appropriate time, he also brought in certain top-ranking Army and Navy officers, especially in working out the general policy and the detailed plans in respect to security. Although Welles himself was the moving spirit in all of these preparations, he does not fail to give due credit to others, and he mentions particularly the work done by Isaiah Bowman, Norman Davis, Myron C. Taylor, James T. Shotwell, Clark M. Eichelberger, Hamilton Fish Armstrong, and Ann O'Hare McCormick. Welles was careful to consult with President Roosevelt on every point, and had the President's warm approval and support. It must have been a heartrending thing for Welles, with these preparations for world order essentially completed under his leadership, to leave the State Department and leave to others the credit for the final drafting of the Charter at Dumbarton Oaks and at San Francisco. Certainly those who worked with him and under him during the preparatory stages regretted his departure and felt his absence keenly during these later stages.

Welles himself has mostly praise for the Charter, although it is not completely the Charter he would have written; in fact, he reviews again his own pet ideas of regional organizations to have the primary responsibility for the maintenance of peace, although within a universal framework; of regional representation in the Security Council, with representation of individual states only for the Great Powers; of a modified veto; and of headquarters established within the territory of a small Power (he seems to prefer the Azores), instead of in New York. He has some sharp criticism of certain actions at San Francisco on the part of the American delegation, notably in respect to Argentina and other Latin American problems; he refers to Stettinius as a man of good intentions, but "devoid of any knowledge of international relations or even of modern history, and lacking the personal qualifications desirable in so high an office"; but in general he shows no jealousy of those who brought to fruition what he had so vigorously championed and so admirably planned, but only a keen

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

desire to see the United Nations intelligently organized and successfully operated. It must be added that Welles was, when he wrote this book, somewhat disillusioned and discouraged on that score, but still hopeful.

With respect to Welles' treatment of the several other problems considered in the volume, there will be those who will differ with his point of view, but there ought not be many to dispute the excellence of his general analysis. He is critical of Russia, but he is also critical of the United States and of the Great Powers generally; he deplores the tendency to blame "the tragic collapse in peacemaking" solely on Russia, and he pleads strongly for, and makes suggestions how to secure, an understanding between Russia and the Western Powers in order to avoid the alternative of "international anarchy." On France, on Germany, on Italy, on Poland, on Greece, on Yugoslavia, on Austria, on Palestine, on India, on China, on Korea, on Japan, and especially on Latin America, Welles has rather decided views, but he arrives at them only after a careful and generally convincing discussion of the problem in each case. Throughout there is special emphasis on the policy of the United States. With respect to that policy, Welles is critical but understanding, somewhat too much the career diplomat in his approach, but nevertheless stimulating in his review of developments. The book is not written as a conventional text-book, but it might well be used as a text in college courses on recent American foreign policy. There is nothing better at this time.

CLARENCE A. BERDAHL.

University of Illinois.

The Russia I Believe In; The Memoirs of Samuel N. Harper, 1902–1941. EDITED BY PAUL V. HARPER, WITH THE ASSISTANCE OF RONALD THOMPSON. (Chicago: University of Chicago Press. 1945. Pp. 279. $3.50.)

It is always sad to review a posthumous work—and especially sad in the case of Sam Harper, whose tireless vitality, unflagging enthusiasm, and bubbling joy of living brought so much happiness and inspiration to his many students and friends, including children for whom he showed genuine affection and understanding. This book is based on Harper's unfinished memoirs, on which he was hard at work during the war years in his spacious and friendly Chicago home, where one invariably could hear intelligent and fair-minded talk about Russian affairs. It will always be a matter of regret that Harper died before he had time to complete his memoirs, and to review his lifelong analysis of Russia in the light of post-war developments. But his brother, Paul V. Harper, performed a real public service by editing, with the assistance of one of Harper's students, some of the notes, letters, and papers accumulated during a period of more than forty years of Russian travel and study. Although the collection

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

necessarily is fragmentary, it conveys a good deal of the author's robust and optimistic spirit, and contains many penetrating comments on Russia both before and after the Bolshevik revolution—that mighty watershed in the country's modern history.

To the task of studying Russian affairs Harper brought many valuable assets: an intense interest in the Russian people, first aroused in him, as he points out in an amusing first chapter, by his father, president of the then recently established University of Chicago, described by some as "a dynamo in trousers"; knowledge of the Russian language; long association with a distinguished British student of Russian affairs, Sir Bernard Pares, who contributes a foreword to this volume; acquaintance with Russia not only since 1917, but also in Tsarist times, with the result that he was able to see the revolution, as few have done, in perspective; and the considered judgment of the trained historian, which he did not permit his sympathy for Russia to warp, even at the most critical moments in Russo-American relations.

Harper's observations on the operation of the first Duma, which he witnessed in 1906, would have dispelled many dangerous illusions about Russia had they been carefully studied by Western statesmen at that time. He mentions how pleased he and Pares were "that our institutions were being introduced in another country," but were "sobered considerably" by the reluctance of the Duma to come to grips with the fundamental land question, and "were forced to realize more clearly the peculiar social-economic conditions under which our Western institutions were being introduced." He noted that the Tsarist government was unwilling to give the Duma anything more than a formal existence, and was aware of the profound revolutionary ferment at work in Russia, saying prophetically: "With all reserve, this movement will some day be of as great historical importance as the French Revolution." He pointed out the political inexperience and lack of courage of Russia's all-too-small group of liberals, adding this shrewd comment: "Milyukov and his party are in a blue funk—they are playing a ticklish game, trying to keep in with the radicals and yet not become radical themselves."

With the historical background he had acquired by frequent periods of study in Russia before and during World War I, Harper was able to avoid the mental gyrations displayed by many other Western observers in the turbulent quarter of a century of Soviet rule. He made an outstanding contribution to the study of Soviet political methods in his books on the government of the Soviet Union and on civic training in Russia—"making Bolsheviks," as he called it. At a time when other Americans fell into the error of exalting Russia as a new Utopia, he pointed out that the "terrible" tempo of the first Five-Year Plan was "responsible for the food and goods shortage and also for the rigidity of political control" of the early 1930's.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

He did not hesitate to say, while other observers waxed lyrical over Soviet planning, that the Soviet government, in its Five-Year programs, was actuated in the first place by political and military considerations. "This fact," he wrote, "led me to the conclusion that, to date [the 1930's] there had not been any really scientific economic planning."

This same fairness of judgment, however, caused him to point out in subsequent years that the Soviet Union was beginning to make material and cultural progress; that the young generation, at least, felt hope and enthusiasm about the Soviet system; that the 1936 constitution promised greater flexibility and tolerance in political affairs. He did not condone the purges of the middle 1930's, but he understood the reasons why Stalin wanted to eliminate much of the old party leadership among the Communists. Instead of denouncing the Soviet-German pact of 1939, as some of the earlier enthusiasts about Russia did at that time, he calmly pointed out the reasons for Moscow's decision in a brief analysis which should be carefully re-read at the present time, when again many accusations are directed against Russia on the basis of inadequate evidence or even sheer emotional reaction. The last fifty pages or so of this volume are full of common-sense observations on Soviet foreign policy which make one regret once more that Harper did not live long enough to aid the United States in unraveling some of its problems with Russia after World War II.

But Harper himself had no illusions about the nerve-wracking aspect of trying to understand Russia in these rapidly changing times, and of interpreting it to Americans. Writing in 1936, he says frankly: " . . . one can get fed up with this darn Bolshevism. If I did not have the farm to which I can go every now and then and fight the weeds, I would find it difficult to keep the balance and at the same time recognize what has been accomplished. When I get my political textbook done, I shall be tempted to go back to history—and way back to the earlier periods, about which it is easier to come to conclusions." These moments of discouragement, however, did not last long. Visiting Russia on the eve of World War II, he wrote: "I found the situation better than I had expected to find it—less tense politically and less tight economically." And his innermost convictions were expressed in a touching sentence written in Warsaw in June, 1939: "These forty-eight hours of bourgeois luxury have been pleasant—for the body and stomach at least—but in mind I feel already bored. Fact is I'm homesick for the more real life of Sovietism." The outstanding contribution of Sam Harper's career as teacher and writer was his success in helping others to learn how to look for the "real," whether good or bad, in Russia, behind the façade both of Russian propaganda and of Western denunciation.

VERA MICHELES DEAN.

Foreign Policy Association.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The Soviet Impact on the Western World. By Edward H. Carr. (New York: The Macmillan Company. 1947. Pp. viii, 113. $1.75.)

This slender volume is a truly significant contribution to the understanding of one of history's decisive developments. Written with calm detachment, the book provides a timely corrective for both the passionate denunciation and the unstinted praise of the Soviet Union with which less objective writers have confounded the issue. Professor Carr's matter-of-factness, the incisive acumen with which he unerringly goes to the core of problems, and the historical insight with which he assesses the import of salient developments, combine to make his approach eminently sophisticated. At the same time, the author's well-known gift of simplification and his clear style make the book very readable.

There is none of the dogmatism that characterizes the "system-maker" in Professor Carr's analysis. He cautions that the relation between cause and effect in history is problematical. He also admits the possibility that certain "Western events or tendencies were not the effect of Soviet example, but that some remote cause was producing similar effects successively in different countries." He points out, however, that Soviet experience may "still be significant and suggestive for much that is happening or seems likely to happen in the West." Subject to these qualifications, Professor Carr sets out to show, "not the merits or demerits of the Soviet achievement, but the extent of its significance for Western civilization."

Actually he does much more than that. Preliminary to his analysis of the political, economic, social, and ideological influences of the Soviet Union on developments abroad, and its impact on international relations, Professor Carr succinctly explains in each case the underlying ideas and their Western roots, as well as the aims of Soviet policy and the methods and institutions employed in carrying them out. While Professor Carr—unlike the "Friends of the Soviet Union"—recognizes casuistry for what it is, he never dismisses the official rationale of Soviet policy as mere make-believe. Instead, he explains the real underlying intent and shows to what extent practice approximates the avowed purposes. In so doing, the author does not resort to the usual sophistry of judging Soviet performance by standards implicit in the Western connotation of such terms as democracy and freedom. Moreover, he does not consider Soviet intentions and policy inscrutable because such terms, in Bolshevik usage, have a meaning divergent from that accepted in the West.

In his concluding chapter, Professor Carr expresses the view that, seen "in the broadest historical perspective," and "irrespective of the validity of the doctrines which it promulgated," the Bolshevik revolution may well be "one of the great turning-points in history." "The impact of the Soviet Union has fallen on a Western world where much of the framework of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

individualism was already in decay." He also warns against the assumption that Bolshevism is a "specifically Russian phenomenon without significance for Western civilization."

Raising the question as to how the West can "best meet the challenge presented by the Soviet impact," Professor Carr points out that, in so far as "the issue is one of power, it will depend on the rival strengths, military and economic, of the competitors." More decisive than power probably will be the decisions of peoples who have not yet chosen between Western democracy, communism, or an intermediate system. A great deal will depend also on the indirect support given to the Soviet Union by disaffected members of Western society who regard some Bolshevik ideas as suitable remedies for its shortcomings. If this be true, much will depend on the respective economic achievements and social programs of democracy and communism. "The fate of the Western world will turn on its ability to meet the Soviet challenge by a successful search for new forms of social and economic action in which what is valid in individualist and democratic tradition can be applied to the problems of mass civilization."

HENRY JANZEN.

Pennsylvania State College.

La Politique des Partis sous la IIIe République. By FRANÇOIS GOGUEL. (Paris: Éditions du Seuil. 1946. Two vols.: Vol. I, 1871–1932, Pp. 428; Vol. II, 1933–1939, Pp. 350.)

These volumes are a moving political document. Written in a German camp during the captivity of their author, they testify to the searching inquiry undertaken by the younger generation into the causes of the political conflict which, even today, divides France. Starting on a somber note, the author ends by expressing the hope that, through a revolutionary change in its economic structure, France can again find a common basis for its political life.

Goguel writes around the central theme of the fundamental division of France under the Third Republic between two political tendencies, which he chooses to call the Party of Movement and the Party of the Established Order. These, and not Siegfried's Left, Center, and Right, were the fundamentally opposed political groupings: a party moving towards the progressive liberation of man and assuming constant change as its principal tenet; another party, essentially conservative, and loath to give up the sum total of political and economic relationships existing at any one time. The remarkable thing about this division was that the relative strength of the two parties remained unchanged throughout the lifetime of the Third Republic. According to Goguel, in 1877 the candidates of the party of the Established Order (followers of MacMahon) obtained forty-five per cent of the total vote. In 1928, the candidates of the same party

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

(followers of Poincaré) obtained 44.56 per cent of the total vote. In half a century, the variation had been less than one-half of one per cent. This is a record of stability without a parallel in any other country in the world.

The Party of Movement links the Jacobin tradition of the Revolution with the radicalism of the nineteenth century, the socialism of the early twentieth century, and the communism of today. To it belong the lower middle classes, the industrial workers, and a good many of the southern peasants, who, having been used to the ownership of their land since Roman times, consider it as natural as rain or sunshine and think nothing of joining extreme political groups, only for the sheer excitement of it, of course, and without any thought of allowing them to tamper with their inviolable property rights. To the party of the Established Order belong all the conservative groups, the upper bourgeoisie, but also workers and large masses of peasants, especially from the east and west, who, having only recently secured their property rights, and still fearful about the continuation of these, cling to those groups which are on the side of the status quo.

This analysis has a good deal of validity and is fortified by a penetrating historical review of the period under consideration. That the political division outlined by Goguel has also meant the irreconcilable antagonism which he seems to consider an essential feature of French politics may, however, be doubted. The antagonism described by Goguel is a destructive one, with each party trying always completely to destroy the other in the hope of gaining a permanent ascendancy. French political life is said to be characterized by a relentless logic which refuses to accept compromise (as the Anglo-Saxons do) as a vital ingredient of human relations. Anyone who has watched French politics at work would seem to be bound to admit that not everything was intrigue and double-dealing, but that, until recently at least, the search for compromise and reciprocal toleration was ever-present.

On another score, the rigidity of Goguel's conceptual framework does not seem to stand up under the test of political reality. He himself has to admit that the majority which the Party of Movement obtained in 1924, 1932, and 1936 broke down every time within two years of the elections as a result of the cleavage between the Radical Socialists and the Socialists, groups both belonging to the Party of Movement. The reason was clear: the common political ground joining the Radical Socialists to the Socialists was not enough to conceal the deep gulf separating them on economic grounds. Their common appeal to a "lay state" proved an empty and obsolete slogan, inadequate to face the new economic problems which were leading the Socialists to press for the nationalization of industry, while the Radical Socialists remained attached to the liberal economic order.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Looking at the future, Goguel strives hard to find a common denominator for the two tendencies. He feels that it may be said to exist in a common mysticism which gives the highest place among all values to the personality of man. He is satisfied that both the Party of Movement and the Party of the Established Order consider the individual human being the core of society, and that to its perfection and freedom everything must be subordinated. He believes also that both tendencies have deviated to some extent from their adherence to this mysticism of the human person, but that the Party of the Established Order is more guilty than the Party of Movement in this respect. Too often and too much have authority, power, and property been defended as good in themselves and not as mere subsidiary instruments for the development of human dignity and welfare. Today the hope of France may lie in the restoration in both parties of a renewed common fund of humanistic feelings. This can be achieved only by the workers, since the middle classes must be considered as no longer adequate to the task. It is the popular *élite* which must create the new political class.

If tomorrow a bridge can be built between the Party of Movement and the Party of the Established Order and today's awful feeling of latent civil war be done away with, this will be only because the capitalistic structure of France has been to a large extent abolished, Goguel concludes, without being apparently aware of the new tensions and dangerous issues which would thus have to be faced and solved. He is convinced that the Third Republic spent too much time on politics and too little time on technical and economic problems. Politics divide, while technique unites. In a truly humanistic socialism, France may find the basis for peace and progress and freedom. The goal is enticing. It is a pity that Goguel is generally silent on the means which can effectively lead France to that elusive goal.

MARIO EINAUDI.

Cornell University.

Democracy in France: The Third Republic. BY DAVID THOMSON. (New York: Oxford University Press. 1946. Pp. 283. $4.00.)

Mr. Thomson's *Democracy in France* will be welcomed by students and teachers of comparative government. It is an excellent short study of the working of democratic institutions under the impact of complex psychological and social forces. The author shows a thorough knowledge and sympathetic understanding of France's history. He has a flair for the nuances of political thought and knows how to get at the fundamentals, in ideas as well as in economic and social factors. His choice of sources is discriminating, his analysis both stimulating and sound.

The arrangement of the book is primarily logical. It treats successively

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the revolutionary tradition, the class structure of French society, the democratic instrument, and the main issues and crises that faced the Third Republic. It ends with a brief account of the Vichy government and the birth of the Fourth Republic. A fine bibliography and an appendix presenting some important documents in English translation are valuable additions.

France's democratic institutions, in spite of their "immense elasticity" —and in spite of the positive accomplishments of the régime—did not, concludes the author, provide for the corrective of stabilization needed in an unstabilized society. Nor could they provide for the necessary adjustments to the economic and social problems of the twentieth century. "From the 'revolutionary tradition' modern France inherited a double 'geological fault' which ran through her social life and her political structure: the conflict between liberty and equality as ideals and the gap between democracy and government." The notion that more government meant less democracy, that freedom and authority were irreconcilable, explains the fundamental weaknesses of French democracy: the conflict between the sovereign state and the sovereign individual and the resultant conflict between the sovereign executive and the sovereign legislature.

Unlike the British and the Americans, the French lacked general agreement as to the fundamentals of the régime itself. The author shows how the counter-revolutionary forces presented a constant danger, forcing the republicans to spend their energy resisting rather than constructing. Timely adjustment of institutions to new needs was made impossible. Fear of autocracy led many democrats to insist on an anarchical concept of freedom at the expense of good government, and as the synthesis of freedom and authority could not be achieved, that of freedom and equality was obviously out of the democratic reach. We might say the chief paradox is that French love for security and order was more than anything responsible for insecurity and disorder. Stubborn opposition to change made for aggressiveness on the part of the Left, for a strong revolutionary temptation which could only reinforce the authoritarian bias of many conservatives. In these conditions, only "half-hearted compromises were reached, of which the fruits were usually 'too little and too late'"; and these were only "compromise without tolerance."

In his discussion of foreign policy between the World Wars, Mr. Thomson mentions the "overburdening of France," the nation's incapacity to fulfill the undertaking it had assumed. He perhaps goes too far in stressing the fatality of France's defeat: "It is probable that after the remilitarization of the left bank of the Rhine in 1936, the defeat of France was inevitable should war break out." It could be answered that, with the help of the Soviet Union, France could still have kept the initiative which it later lost to a pacifist Britain and could successfully have opposed further

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

German aggression. The fact that Soviet help was not wanted is another matter, but one that deserves some consideration.

It is not possible to do justice to Mr. Thomson's able and compact survey in a brief review. Faced with the complexities of French political thought and behavior, he has been able to clarify without over-simplifying.

C. A. MICAUD.

University of Virginia.

The Chinese Family and Society. By OLGA LANG. (New Haven: Yale University Press. 1946. Pp. 395. $4.00.)

Population in Modern China. By TA CHEN. (Chicago: University of Chicago Press. 1946. Pp. 126. $2.50.)

Olga Lang was originally trained in Russian demographic methodology. This was supplemented by studies in America, and finally by observations on the spot in China. Her presentation of the configuration of the predominating social unit of China, the family, is thus highly systematic. For material, Miss Lang ingeniously utilized in part the social patterns presented by early Chinese novels as well as current fictional literature. Authentic Chinese viewpoints are thus captured which would otherwise escape the foreign observer. While the study is doubtless the most exhaustive yet made, limitation to questionnaires or hospital records suggests the difficulty of broad generalizations on China's familial and social structure. Due to the vastness of the land, the diversity of urban and rural conditions, of climate, food, level of subsistance, degree of exposure to Western industrialization, and other influences, no over-all study has yet been possible. This must wait upon the compilation of reliable governmental statistics covering every region of China.

The Chinese family is briefly presented first in its historical structure and functioning in old China. Its climate was an Oriental despotism with free peasants as the wealth-producing class and a powerful bureaucracy as the rulers. The latter, concentrating power in a small group, were concerned only with two essential functions, land irrigation and flood prevention. Industry was not encouraged by the government, which looked only to taxation of agriculture for its income. A vicious cycle of an exacting landlordism powerful enough to avoid payment of taxes, resulting in an impoverished exchequer and an exploited peasantry, invariably led to dynastic overthrow. The new dynasty usually began by redistributing the land, only to invite in time a new agrarian crisis according to the stereotyped pattern. Under the circumstances, demand for farm lands stimulated growth of population, fixed to the land, with Confucian ideology intensifying the stagnant character of Chinese civilization.

Properly enough, the bulk of the book is devoted to the family, both rural and urban, in contemporary China. This presents the traditionalized

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

familial structure, but functioning in the new economic and social environment produced by the infiltration of foreign influences. Many of these impulses are indirect, but they nevertheless produce profound consequences. The old family is under attack with the most obvious social effect, as is usual, upon the status of women. Lessening of parental intervention in the selection of a spouse, opposition to concubinage, the unprecedented independance of girls who are factory wage-earners, the passing of the traditional deference of youth toward elders, are shown as features of an almost catastrophic change. However, in this widely authoritative study, which presents the most complete picture of China's changing societal structure today, the author is led to conclude that for China "a new pattern of family life has begun to emerge, which is certainly brighter than the old pattern." The text is illuminated by valuable tables; and extensive notes and references are appended to each chapter.

Dr. Ta Chen is a recognized authority on population problems in his own country. Scientifically prepared demographic data for China have been hitherto conspicuously lacking. Dr. Ta Chen does not concern himself with over-all figures, but in certain population features such as statistics of sex, age, size of family, and diversity of population, investigated by persons trained for the task. These and other conditions of population material are described only for the Kunming Lake region. As in certain other areas noted by Dr. Ta Chen, this forms little more than a sampling method. It serves, however, to prepare for nation-wide population studies when the proper time comes. An extremely timely chapter considers the migrations of the war years. The interesting opinion is advanced that twenty-five per cent of the population of the leading cities in occupied areas migrated, but only five per cent of the urban population. Nevertheless, a staggering total of over fourteen million displaced persons is represented.

This valuable study closes with a chapter advocating an advanced population policy which will no longer foster social stagnation. Unconditional and universal increase of population is decried as accountable for the present low living standards of China's masses. Both negative and positive eugenics should be encouraged with a view to promoting population quality. Dr. Ta Chen has made a useful and informative contribution to a subject of wide interest and importance. The appendix includes some sixty-five statistical tables upon which the text is based in part.

ESSON M. GALE.

University of Michigan.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

Teachers of courses on judicial administration and on related phases of the judicial process will be interested in Maynard E. Pirsig's *Cases and*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Materials on Judicial Administration (American Casebook Series, West Publishing Co., 1946, pp. xxvii, 1017). This is the first book of materials on the subject designed for class use. The first two chapters provide certain background materials on "justice as the aim of the legal order," and on "the adversary method" used by the courts in contrast with the administrative method of deciding disputes over rights. In the next pair of chapters, the judicial process is more thoroughly analyzed. "The doctrine of precedent" heads a discussion of the work of the judges in developing the rules and principles of law through the study, application, and modification of precedents. Chapter 4, on "the determination of facts," stresses especially the problem of fact-finding in criminal cases, but broadens out to include civil cases in a long section on the jury system. Chapters 5 and 6 deal with the "organization of courts" and their personnel, "the judiciary." In Chapter 7, "the legal profession" is considered from various viewpoints such as education for and admission to the bar, the professional status and organization of the bar, and the rôle of lawyers in the judicial process. The closing chapter (8), entitled "Agencies and Methods of Reform," deals with rule-making by the courts, judicial councils, judicial statistics, and pre-trial procedure. In all chapters the materials are drawn from a variety of sources, such as judicial decisions, law review articles, bar association reports, treatises and monographs, and government documents. Many of the nation's leading jurists are included in the list of authors. This reviewer notes the absence of materials on a number of administrative topics, such as court budgets, the collection of fines and costs, expenditures, accounts, bail-bond practices, and other financial matters; the selection, classification, and control of the subordinate personnel of the courts; dockets, records, and administrative reports; court libraries and research facilities; the provision of competent personal assistants for the judges; and court rooms and equipment. First-rate materials on these subjects are hard to find, but we may hope that future editions of this work will include more of them. In the meantime, here is a book that covers in an excellent manner the more legal phases of court administration, and that has already stood the test of the classroom.—WILLIAM ANDERSON.

The history of the failure to achieve voluntary consolidation and integration of the railroads is ably reported by Dr. William N. Leonard in *Railroad Consolidation under the Transportation Act of 1920* (Columbia University Press, 1946, pp. 350, $4.00). Dr. Leonard's searching analysis compels agreement with his conclusion that the only alternative, short of nationalization, is compulsory consolidation. The Interstate Commerce Commission was required by the Transportation Act of 1920 to formulate a plan for railroad consolidation, but the act carried no "teeth" if volun-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tary coöperation were not achieved. The record of 1920–40 shows that "not a single consolidated system proposed in the complete plan of 1929, or in the modified form of 1932, was ever brought into being; and neither at the time of its birth nor at the time of its extinction did the consolidation plan correspond to the actualities of railroad control" (p. 256). The act's failure well illustrates the difficulty of attempting to effectuate public policy which does not command in advance some substantial support, or at least acceptance, among the groups to be affected. In this case, when the legislative criteria were inconsistent, and where the administrative arm itself became disenchanted with the prospect for success, translating policy into actuality became impossible. The major portion of Dr. Leonard's excellent study is devoted to a detailed factual accounting of experience with the consolidation problem from 1920 to 1940. He attributes failure to two principal considerations. First, the ICC could map consolidations, but under the act could not command their execution. The record makes it abundantly clear that the railway executives simply did not want planned consolidation. Second, the ICC tended to chart its course by expediency. Rather early in the game, it decided to "let things ride" rather than meet the problem squarely. Dr. Leonard has furnished a penetrating analysis of administrative defeatism in the face of concerted opposition by private interests.—HAROLD W. DAVEY.

In *Lincoln's War Cabinet* (Little, Brown, 1946, pp. 482, $5.00), Burton J. Hendrick traces the formation of Lincoln's cabinet, its internal dissensions, and its final break-up. Throughout the story one is impressed by the tact and unselfishness of Lincoln, who met one crisis after another with political skill and, in the main, with wise discretion. In choosing the members of his original cabinet, Lincoln had to take into consideration the critical state of national affairs and the complex character of the party which had elected him. In the light of these facts, it is interesting to note that the men appointed were essentially the same as those selected by Lincoln immediately following his election in November, 1860. Striving for party unity, he sought to gather around him men representing diverse policies and different geographical areas. William H. Seward, Samuel P. Chase, Gideon Welles, Edward Bates, Montgomery Blair, Simon Cameron, and Caleb B. Smith made up the original group. Cameron was succeeded by the temperamental but able Edwin M. Stanton, and Smith by John P. Usher. Seward and Chase had been strong rivals of Lincoln for the presidential nomination. Seward, after his initial attempt to dictate the policy of the Administration, gradually came to recognize Lincoln's superior qualities; but Chase, aided and abetted by his fascinating daughter Kate, never ceased in his efforts to attain the presidency. Mr. Hendrick paints brilliant word pictures of each of the cabinet members

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in turn, after which he takes up the various crises which arose over the preservation of the Union, the slavery issue, the command of the Army (with emphasis on the dispute over McClellan), and the attempt of the radical slavery men in Congress to dictate to Lincoln the personnel of his cabinet. Each episode is related with dramatic skill—as is also such homely scenes as that of the war-worried president finding relaxation in a game of one o' cat with the Blair grandchildren at the Blair estate at Silver Spring. Mr. Hendrick has based his story largely upon diaries, autobiographies, and biographies of the cabinet members or their contemporaries. He does not appear to have drawn upon the scholarly researches of Professor J. G. Randall, who has contributed so much to the study of Lincoln in this same period of his career. To what extent Hendrick and Randall may have differed in some of their conclusions, space does not permit to be discussed here. The fact remains that Hendrick has produced a book which will delight the many admirers of Abraham Lincoln.—EVERETT S. BROWN.

"Labor Relations and the Public" is the topic for the November, 1946, issue of *The Annals of the American Academy of Political and Social Science* (Vol. 248, pp. 316, $2.00 paper, $2.50 cloth). The purpose of the volume, according to the editor, Herman Feldman, is to afford a symposium of "informed and thoughtful views . . . by distinguished contributors [who] though differing in many particulars, . . . have in common a deep interest in maintaining for labor an important and protected status consistent with democratic government." The twenty-five articles, from as many different writers, are grouped under six headings as follows: "Economic Issues Affecting the Public"; Intra- and Inter-Union Relations and the Public"; "The Labor Contract and Its Administration"; "Labor Warfare and the Public"; "Public Policy and Control"; and "Bibliography." Here is presented a well-balanced, informed, and judicious analysis of a subject which can so easily be debased to the level of a street brawl. In fact, those who prefer heat to light, particularly on the management side, will find the volume disappointing. This spirit of reasonableness extends from the articles by William Green and William L. Batt to those presented by Edgar L. Warren and Senator Joseph H. Ball. Congressman Howard W. Smith and John L. Lewis were not contributors. The material is timely and useful to those interested in the labor field, but who have fallen behind in their reading during the war period. Of particular interest are the articles dealing with strike legislation and compulsory arbitration in other countries. Unfortunately, limitations of space necessitated only brief mention of this foreign experience, which can be so useful for American analysis as we search for a workable basis of management-labor relationships. The reader puts down this symposium

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

with the feeling that the liberal point of view, as applied in the labor field, still has a wide base and an impressive clientele. It is too bad that so few of those who would profit most by exposure to such an approach will read this volume—the sinners will not hear the sermon.—WALLACE BREWSTER.

The eighth edition of Robert E. Cushman's *Leading Constitutional Decisions* (Crofts, 1946, pp. xvii, 385, $2.25) continues to achieve the stated objective of the first edition, namely, to meet the needs of those engaged in the study of American national government or constitutional history who should become familiar with some of the great decisions of the Supreme Court of the United States which have served as landmarks in the development of the American constitutional system. While the latest revision contains seven new cases, all decided since 1940, the total remains at fifty. The new cases include Duncan v. Kahanamoku (Hawaiian military law), State Board of Education v. Barnette (flag salute), and Edwards v. California (anti-Okie law). Although there is little to criticize in the selection of cases, it may be noted that the net gain of two cases to the citizenship and civil and political rights sections, now totaling twenty-one cases in all, has resulted in a distribution which is less consonant with the usual organization of courses in American government or constitutional development. The extensive and valuable introductory notes have been brought up to date with the inclusion of references to forty recent cases. A welcome addition, as an appendix, is the Constitution of the United States.—WILLIAM O. FARBER.

In *Hawaii's Japanese; An Experiment in Democracy* (Princeton University Press, 1946, pp. viii, 264, $3.00), Andrew W. Lind provides significant evaluations of the efforts of a racial minority group to adapt itself to the pattern of American democracy—and *vice versa*. Dr. Lind briefly summarizes the rôle of the Japanese in Hawaii before Pearl Harbor, but places his major emphasis on developments during the war. Sound sociological method has apparently been applied to the collection and analysis of the evidence. Field work on the project was begun in 1942, and conscious attempts were made to collate contemporary evidence on group attitudes toward socially significant events and developments. There is no indication that the author has had access to confidential reports of investigations conducted by military and naval intelligence agencies or by the F.B.I., but it is not likely that such material would have affected the basic conclusions. Dr. Lind carefully distinguishes the various facets of the question, handles each with intelligence and skill, and has produced a well-written and sympathetic study stressing the problems of mutual and reciprocal adaptation of peoples of differing racial origins on the Hawaiian scene.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The unfounded rumors of complicity and sabotage which gained wide currency in the early months of the war are sifted and dispelled, and in the process the author shows that acceptance of these rumors as a basis for national policy toward Americans of Japanese ancestry was more general on the mainland than in military circles in the islands. The general loyalty of the A.J.A.'s and their services to the islands and the nation are demonstrated and, all factors taken into account, Lind concludes that "the net effect of the war upon the Japanese has been clearly to hasten and assist their participation in the broader life of the Hawaiian community" (p. 258). Here is a worthy bookshelf companion for Leighton's *The Governing of Men*.—H. ARTHUR STEINER.

In his *The Slave States in the Presidential Election of 1860* (Johns Hopkins University Studies in Historical and Political Science, Series LXIII, No. 3, 1945, pp. 332), Ollinger Crenshaw records, with thorough documentation, the course of events that led to the greatest débâcle in American history: the inflexible refusal of the Douglas delegates in the Charleston Democratic convention of 1860 to abandon the "popular sovereignty" formula and promote a Congressional guarantee of slavery in the territories, the consequent bolting of the "Southern Rights" delegates, and their eventual nomination of Breckenridge; the nomination of Bell by the old Whigs under the title of Constitutional Unionists; and the nomination of Lincoln by the Republicans. If anyone still entertains the theory that secession represented the consummation of a deliberate conspiracy, this study should disillusion him. The fifteen Southern states had one hundred and twenty electoral votes, and the capture of the extra thirty-two required for a majority did not seem impossible. But factional bickering frustrated every effort at the required unity. Fusion of Douglas, Breckenridge, and Bell electoral tickets was arranged in key Northern states too late to defeat Lincoln. His election was a foregone conclusion throughout the South long before election day, and plans for secession were consequently then well matured. A possible fusion of the border state Constitutional Unionists with the Republicans intensified the hysteria of the extremists of the deep South. Dr. Crenshaw's research reveals how well-nigh universal was the Southern Lincoln phobia despite his essential moderation, his detestation of abolitionists, and his sympathetic understanding of Southerners and their problems. Dr. Crenshaw seems puzzled over Lincoln's absolute rejection of the Crittenden Compromise, which would have appeased the secessionists by restoring the Missouri Compromise line. It must be remembered that Lincoln's party backing as President consisted of a minority combination of discordant factions uncertainly united by the single issue of keeping all the territories free. Consenting to the Crittenden Resolutions would have signaled the im-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

mediate dispersion of the following that had elected him and would have reduced him to the pathetic impotence of a President without a party.—WILFRED E. BINKLEY.

A recent addition to the literature on municipal finance is *Kentucky City Finances* (University of Kentucky and the Kentucky Municipal League, with the coöperation of the Bankers Bond Co., 1946, pp. 275, no price), by staff members of the Bureau of Business Research, University of Kentucky. The study was planned, directed, and edited by James W. Martin, director of the bureau, and Dr. Martin's usual thoroughness may be seen throughout the book. Unlike many other studies dealing with municipal finance, this one is not restricted to an analysis of one phase of the subject, such as taxation or budgeting; nor is it a manual of practices designed especially to benefit finance officers. It is a comprehensive study treating all phases of municipal finance: budgeting, accounting, auditing, reporting, personnel, purchasing, treasury and debt management, tax assessment and collection, and sources of revenue. It is both descriptive and critical, and is more than an analysis of Kentucky municipal finances. The authors explain the best current financial standards and check Kentucky city practices against these standards. Differences in the sizes of cities and the state municipal classification system are recognized. Defective legislation and administration where found are objectively pointed out and specific suggestions for improvements are made in each chapter. The authors point to the best practices in other states, suggest specific statutory and administrative changes, and point to ways by which cities may obtain additional revenues. Perhaps some may disagree with a few of the opinions expressed, such as the suggestion that public service enterprise profits be used to supplement municipal revenues; but such disagreements should in no way detract from the worth of the book. Certainly this study should be beneficial to citizens of the state and to finance officers throughout the country. It would be well if similar studies were made in all states.—W. V. HOLLOWAY.

The last few years have turned up several studies or biographies of Zachary Taylor, "Old Rough and Ready", who was "forty years a soldier and sixteen months the President of his country—" the most thorough and meticulous of these books being Brainerd Dyer's *Zachary Taylor* (Louisiana State University Press, 1946, pp. viii, 455, $4.00). Professor Dyer has examined and exhausted a mass of sources to set forth a self-made leader who grew up in the West of his day and worked his way up from the rank of a second lieutenant to become a popular idol after his defeat of Santa Anna in Mexico. He was unsystematic as a general, failing to make proper use of spies, engineers, and staff officers. He had strong prejudices and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

bitterly disliked President Polk, whom he served under and succeeded. Elected as a Whig in 1848, he ran straight into cabinet squabbles over spoils, and then had a bitter controversy over Congressional issues growing out of war and expansion. Louisiana planter and slave-owner though he was, he stood, as did Jackson in an earlier day, against impending disunion and disunionists. The Clay compromise proposals of 1850 represented too much appeasement to suit him, and he stood stubbornly against them. But illness and death, after he "drank freely of iced milk and ate generous quantities of cherries," removed him from the scene, and Clay had his way. The author gives a good account of this rugged and inexperienced individualist in politics.—H. C. NIXON.

In *The Compass* (Chicago: Commercial Publishing Co., 1946, pp. 374), Walter E. Dudley appears to be pointing in several directions at once in what he calls "A Guide to Peace and Security for the American People" (title page). He would have us reach the millennium by hard work and a return to old-fashioned thrift and other traditional virtues. His theories arise in part from his business misfortunes, which he blames largely on high interest rates. Mr. Dudley abhors bigness in industry, banking, government, or parties; he deprecates public debts and inflation. On the other hand, he advocates exploitation of resources in the direction of self-sufficiency, and the building of huge transportation systems. By such methods will unemployment and the dole be avoided. Mr. Dudley appears to over-simplify many of our current economic and governmental problems, and to misread history, as when he assumes (Chap. V) that we can abolish parties and return to the "equal opportunity and freedom" (p. 45) of our forefathers. Other over-simplifications are seen in his advocacy of lower interest rates, abolition of public debt, and an increase in the "velocity of money," the last to be brought about by lower taxes and increased production with a minimum of governmental interference (Chap. XII). Granting the desirability of some of his aims, Mr. Dudley leaves us wondering at the confusion and lack of motivation in his plans for utopia in our time.—E. F. Dow.

Running the Country (Henry Holt and Co., 1946, pp. x, 1001, $4.75), edited by A. N. Christensen and E. M. Kirkpatrick, both of the University of Minnesota, is the trade edition of *The People, Politics, and the Politician*, published in 1941 by the same firm. The 120 outstanding selections, with their emphasis upon public policy in action and controversy rather than upon formal documentation, are identical in both editions. It is a tribute to the success of the book, widely adopted for college readings, that it is now printed for the general public. Few college texts attain such literary recognition.—FRANKLIN L. BURDETTE.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

FOREIGN AND COMPARATIVE GOVERNMENT

Labor unions in this country have generally confined their interests almost exclusively to immediate gains and have not encouraged their leaders to think in terms of broad economic policies or concerted political action. Some of the newer industrial unions have shown signs of increasing maturity in this respect, but the political backwardness of organized American labor is clear in comparison with the British labor movement. This fact is again emphasized by implication in Trevor Evans' *Bevin of Britain* (W. W. Norton and Co., 1946, pp. 282, $3.00). Here is outlined for the first time the story of the Foreign Secretary from his first boyhood job as a farm laborer to his present eminence. Although Bevin's long career has been almost entirely that of a trade union official and his entry into Parliament dates only from 1940, it is made evident that his union leadership gave him plenty of opportunity to develop qualities of statesmanship and to think and talk in terms far transcending immediate union affairs. This book, written by a labor journalist, is not without bias. There is a tendency to gloss over the bitter quarrels that have punctuated Bevin's rise, or to accept Bevin's side of the story rather uncritically. But there is an attempt also to be fair, and no concealment of the qualities that have made Bevin roundly hated by his opponents. Political scientists may find here an interesting example of a truly proletarian political leader in a democracy, but will add little or nothing to their present understanding of Bevin's ideas and probable policies in relation to the Soviet Union. For the complete and inside story of Bevin, both as union leader and as statesman, we must await his autobiography and the memoirs of his colleagues. A useful chronology accompanies the index.—MORLEY AYEARST.

Eminently qualified for his task, Stewart W. Herman has presented an extraordinarily able report of the human problem in Germany in *The Rebirth of the German Church* (Harper, 1946, pp. xix, 297, $2.50). For some years, the author was pastor of the American Church in Berlin; then as a member of O.S.S. he dealt with German problems; and since 1945 he has been associated with the World Council of Churches in Geneva. As early as August, 1945, he began extensive travels in Germany, reëstablishing contacts with German churchmen. He deals primarily with the Protestant church, and the conflict between the church and the Hitlerian state is outlined. He explains how that church separated into the German Christian movement, the Intact Provincial Churches in the south, and the Confessing Church, which found its center in northern Germany. It is well to have brought out how persistently many German Protestant churchmen resisted the Nazi state. Herman was present at the Treysa Conference of church leaders in August, 1945, where plans were laid for a Protestant Church Union to be known as the *Evangelische Kirche in*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Deutschland. The German churches today are immersed in the problem of relieving human suffering. Out of a description of these efforts, and the fact that the organized churches of eastern Germany are being dissolved, emerges a moving description of events that have taken place east of the Oder-Neisse line. It is not paying much of a compliment to say that the Russians come off better than the Poles in this account. One or two chapters dealing with the problem of German repentance are rather theological in cast, but there is plenty of other pertinent material in this excellent book which will be useful to anyone interested in Germany. Incidentally, the book offers plenty of evidence to support inviting Niemöller to speak in the United States.—E. C. HELMREICH.

Aspects de l'Évolution Gouvernementale de l'Indochine Française (Librairie du Recueil Sirey, 1946, pp. 201) was written in Indo-China during the period of the Japanese occupation. The author, Roger Pinto, is professor of law in the Universities of Lille and Hanoi, and has written extensively on American and Indo-Chinese legal subjects. The thesis of the present book is that while Indo-China should continue to form part of the French empire, a wide measure of self-government must be given its peoples. Separate chapters deal in great detail with the government services, representative institutions, police power, the democratic freedoms, and the sources of law both French and Indo-Chinese. The subject is treated historically, tracing the changes that have taken place from the beginning of French control to the present time. Criticisms are freely interspersed, and each chapter concludes with a section on the reforms which should be introduced. Professor Pinto emphasizes that the problems of Indo-China are predominantly those of the agricultural eighty per cent. "If government service and representative assemblies interest 25,000 people, the government of the villages is far more important to 25,000,000." The author criticizes the slowness and seeming reluctance with which natives, even those who were French citizens, were admitted to the civil service, and particularly to the higher positions. It was only in 1926 that the technical services were opened to them; but they were still excluded from the senior posts of the administrative and police services. Professor Pinto urges that the restrictions on recruitment should be abolished. He admits that this will lead to the growth of nepotism and squeeze; but he trusts that education will eventually create a higher code of official morals. The section on methods of government action gives a careful account of the wide powers of control exercised by the police over the freedom of the individual.—LENNOX A. MILLS.

The "emerging pattern" of economic life in Eastern Europe will be that of a "mixed economy," with nationalized, coöperative, and private sec-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tors. This is the main conclusion of the unusually informative first pamphlet published by the Foundation for Foreign Affairs, *Nationalization of Key Industries in Eastern Europe* (Washington, D. C., Foundation for Foreign Affairs, 1947, pp. 81, $0.25), by Samuel L. Sharp. This so-called pamphlet is in fact an illuminating study—based on a considerable number of primary sources—of the nationalization programs of the smaller Eastern European countries, notably Czechoslovakia and Poland. Texts of the Polish and Czechoslovak nationalization decrees are appended. Factors, other than ideological, which almost compel nationalization—such as the absence of private capital and the disappearance of Jewish and German owners—are examined with a remarkable absence of prejudice. Prospects of American compensation and of future American investment are objectively evaluated. The "Iron Curtain" seems, in the light of this book, extraordinarily transparent.—H. GORDON SKILLING.

Dr. Ta-chung Liu's *China's National Income, 1931–1936* (The Brookings Institution, 1946, pp. 91, $1.00) is a statistical analysis of that country's gross national production of wealth during the six years immediately preceding the Japanese invasion of 1937. On the basis of available official data and the estimates of other scholars—supplemented at many points by his own carefully justified estimates—the author has reached figures which, although admittedly only a rough approximation, are more nearly complete than any previously published. For the benefit of his American readers, these figures have been converted into U. S. dollars and have been adjusted for "price differences," "marketing differences," and the "greater amount of unpaid family work in China"; even with all these adjustments, however, the average annual per capita production of wealth in China during the six relatively prosperous pre-war years amounted only to $40.70 as compared to $540.00 for the United States. In making this material available to the American reader, Dr. Liu and the Brookings Institution have contributed greatly to a better understanding of China's present problems.— G. NYE STEIGER.

INTERNATIONAL LAW AND RELATIONS

The first authentic and detailed account of American diplomatic and military relations with the Soviet Union during the war years is *The Strange Alliance* (Viking Press, 1947, pp. 344, $3.75), by Major-General John R. Deane, wartime head of the United States Military Mission in Moscow. The specialist on contemporary Russian affairs will find here a considerable quantity of direct observations, reported in print for the first time. Among such items may be mentioned Stalin's questioning the sincerity and good faith of the Allies in September, 1941, on the occasion of the Harriman-Beaverbrook visit to Moscow to learn the needs of the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Soviet Union, and some of the circumstances surrounding this suspicion. Those who argue that the Soviet Union, even at the height of the war, was following a policy of maximizing her own power position *vis à vis* both Allies and enemies will find much factual support in the Deane report. Political scientists, however, will presumably not be likely to regard this as a uniquely Soviet trait. Deane's interpretations of what he saw and his conclusions show a certain dogmatism that is surprising in the light of his evident intellectual honesty, indicated by many aspects of the account. This reviewer hopes that American policy will not be based on Deane's interpretation of Russian "racial characteristics," described in a letter to our present Secretary of State (p. 85) and emphasized elsewhere in his analysis of the factors influencing Soviet policy. That the strategic aim of the Soviet Union is "world communism to be directed from Moscow," and that the Soviet leaders will pursue this objective without swerving (p. 322), is a conclusion open to considerable debate, and one that cannot be established on the basis of General Deane's data. To assert that all doubts on this point should have been dispelled by Stalin's speech of February 9, 1946 (p. 320) is not only a dubious interpretation of the speech; it is a piece of over-simplification equal to the acceptance at face value of the dissolution of the Communist International announced by Stalin some years earlier. Nevertheless, the reader will find in this report many significant facts upon which to base his own interpretations of Soviet policy and of American-Russian relations.—BARRINGTON MOORE, JR.

All who consider the Middle East an area of ever-growing importance in the world today, and who think that it deserves more attention in political and academic circles in this country, will warmly welcome K. S. Twitchell's book on *Saudi Arabia* (Princeton University Press, 1946, pp. 192, $2.50). Mr. Twitchell fills an important gap existing in the literature on the Arabian peninsula by supplying the reader, both specialist and layman, with a considerable amount of valuable information concerning Ibn Saud's kingdom. Arabia has been widely treated by orientalists and by historians. First-hand accounts by men who themselves have made history in Arabia, such as T. E. Lawrence's *Revolt in the Desert* and Ronald Storrs' *Orientations*, belong today to the category of classics. Much as they represent a *sine qua non* for any student of political developments in that area, they are too outdated to provide him with the knowledge of radical changes which have taken place in the period between the two World Wars. Mr. Twitchell has been in a unique position to write a book of practical information about Arabia. For the last fifteen years, he has been associated with the Saudi government in various capacities. He also has promoted the extension of American oil interests in the area. The

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

book is divided into three parts, dealing with the physical characteristics of the country, its social and political development, and the position of Saudi Arabia in world economy. The account is predominantly descriptive in character, making no pretense to scholarly presentation. The author naturally emphasizes the economic potentialities of this vast area, presenting a most vivid and interesting account of the pioneering work done by the American oil companies and by various U. S. government missions which visited Arabia during World War II. One criticism is that the author, in his eagerness to describe American-Arabian relations, has not paid enough attention to the activities of other Powers in the area. It would be interesting to learn more about moves and counter-moves of such Powers as Great Britain, Japan, Germany, and Italy in their efforts to secure economic and political footholds in the peninsula. One regrets, too, that Mr. Twitchell did not record more fully the back-stage maneuvering which he had ample opportunity to observe. With this reservation, one may justly congratulate Mr. Twitchell on having included within such relatively short compass so much information useful for an American diplomat, business man, or political scientist.—GEORGE LENCZOWSKI.

American efforts before and during World War II on behalf of Jews persecuted by the Nazis, and recent American moves to aid in the solution of the displaced-persons and Palestine problems, may lead many to think that such actions represent a new departure in American diplomacy. That such is not the case is clearly shown in *With Firmness in the Right* (American Jewish Committee, 1946, pp. xxvii, 489. $4.00), by Cyrus Adler and Aaron M. Margolith. By culling the State Department papers relating to foreign relations, the *Congressional Record*, and other official sources, the authors have marshalled an impressive sequence of American diplomatic actions on behalf of Jews since 1840. From that year, when Secretary Forsyth expressed the horror felt in this country at the barbarous cruelties inflicted on the Damascus Jews by the Turks, the book carries the record up to President Truman's address at the final Plenary Session at the San Francisco Conference in 1945. The subject-matter is divided by countries, and within the section devoted to a particular country the material is treated chronologically except for the final section of the book treating the general developments in the years of World War II. Both diplomatic interpositions by the United States on behalf of its own nationals of Jewish faith abroad and representations on humanitarian grounds for Jews who were not American nationals are included in the volume. The authors present the facts surrounding each diplomatic action simply and clearly, and they quote extensively from the state papers themselves. The method of presentation is very effective; the record speaks for itself more eloquently than extensive commentary could possibly have spoken for it. —WILLIAM J. RONAN.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

William B. Ziff's *The Rape of Palestine* (New York: Argus Books, 1946, pp. viii, 118) having been published first in 1938, only a foreword (three pages) and an epilogue (five pages) have now been added; and in them it is stated that "no part of the pattern of operation described in this book has altered in the slightest," although "a new White Paper has been issued, and several royal commissions and a mixed Anglo-American Commission have made their appearance on the scene." Recent instances of terrorism in Palestine are described as "an effort to meet . . . repressive conditions" which breed "counter-violence by men who find their acts completely justified as a natural outcome of their quest for freedom"—which surely is not a position to beget confidence in Jewry or Zionism as a civilizing force. Whether "the only reliable friends the United States can expect in this section of the world are the Jews" and the dictum that "there has been no real struggle between Jews and Arabs, but only one between the British Empire and the Jews," are accurate appraisals of the deplorable situation now prevailing is open to doubt, not dispelled by either edition of this work. Likewise it is difficult to believe that "the last hope of mankind for an orderly and sensible solution to its problems" (p. 114) reposes in Palestine.—W. LEON GODSHALL.

The title of the booklet, *Canada at Geneva* (Toronto: Ryerson Press, 1946, pp. 117, $0.75) clearly indicates the scope of this latest addition to the Contemporary Affairs Series, published under the auspices of the Canadian Institute of International Affairs. The author, S. Mack Eastman, is a self-styled "League-Loyalist," with fifteen years of experience with the International Labour Office, and now professor at a Canadian university. For Americans, the record of a "safe-seeming" North American country in the League of Nations is of relevance as an indication of what might have been the American record had the United States joined the League. The record of Canada, according to the author, was that of an overseas country, somewhat complacent as to the superior ability of North America to preserve peace, willing to contribute to the social and welfare work of the League, unable or unwilling to implement many of the ILO conventions due to constitutional limitations, and unfavorable to tariff reductions. In the field of security, it was the record of a country anxious to reduce the commitments of the Covenant as regards military sanctions, inclined to support the German view on such questions as minorities and armaments in the twenties and early thirties, and contributing her share to the appeasement of Japan, Italy, and Germany in the final decade of catastrophe. This refreshingly critical book falls between the two stools of a scholarly research study and a popular presentation, and is also marred by poor organization and an inadequate analysis of the material culled from League records and other sources. It also seems regrettable

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

that the rich experience of the author in Geneva was not directly drawn upon. There is a curious tendency to accept the "have-not" argument of the aggressor states as regards raw materials, in striking contrast to the author's realistic evaluation of Germany's demand for equality of armaments.—H. GORDON SKILLING.

In a small volume entitled *War or Peace* (Island Press, Social Science Handbooks No. 4, 1946, pp. 96), Scott Nearing considers war from the point of view of economics, politics, sociology, and morality, and then in a final chapter draws some conclusions and makes a number of suggestions. The book is not presented as a scientific study of war, and the ideas throughout are familiar to anyone who has done much reading on the subject. Mr. Nearing brings out the waste economically, socially, and morally which war entails. He points out that instead of ensuring peace and security to a nation, military power "involves the powerful in war." In several places he states that war is a part of our present social pattern that stresses the acquisition of wealth and power, a point which the reader may wish he had discussed at greater length. The author believes that the change from the war pattern to a peace pattern must come gradually as a new ethic is developed. At the end, he outlines in ten points a program which stresses the promotion of a new ideology of peace, disarmament, world government, and economic reform looking toward equality of opportunity for all. The value of the book is in its forthright and readable statements of facts which need to be brought to the attention of the public over and over again.—NORMAN L. HILL.

In *Food, Famine, and Relief* (League of Nations Publications, II. Economic and Financial 1946. II.A.5, pp. 162), Mr. John Lindberg, of the Economic, Financial, and Transit Department of the League of Nations, has added a third valuable study of food conditions throughout the world. The two excellent previous studies by the same author were *Wartime Rationing and Consumption*, published in 1942, and *Food Rationing and Supply 1943/44*, published in 1944. The present study is in the nature of a summary of the preceding studies, with much additional and interesting material, and covers the period 1940–46. Mr. Lindberg analyzes the various types of food rationing during the war and summarizes their efficiency. He discusses the postwar food crisis and the efforts of UNRRA to combat it. He attempts to show the effect of food shortages upon morbidity and mortality rates. One of the most interesting and valuable parts of the study is the voluminous statistics on legal food rations in the period 1939–45, in thirty countries, to be found in the appendix. The reviewer believes that for the political scientist these statistics would furnish valuable source material for analysis of the effect of food upon domestic and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

international politics, a subject which has generally been neglected.—JOHN B. MCCONAUGHY.

POLITICAL THEORY AND MISCELLANEOUS

In the past, too little systematic attention has been given in this country to the problem of Latin American penology. This is a regrettable circumstance, as our neighbors to the South undoubtedly have much light to throw on this important area. In his *Penology from Panama to Cape Horn* (University of Pennsylvania, for Temple University Publications, 1946, pp. xiii, 269, $3.50), Negley K. Teeters, assisted by a grant from the Cultural Relations Division of the Department of State which carried him from Panama through seven South American countries in the summer of 1944, makes an effort to fill this need. His effort is not without difficulty, however, as he had no previous acquaintance with either the languages or the culture of the countries which he visited. With only four months available to survey the penal systems of eight scattered countries, the mere physical task of traveling over such a vast area proved a formidable problem in itself. Accordingly, the time which he could spend in each country was from one to three weeks. Undeterred by these and other very real difficulties, the writer undertakes in a preliminary chapter some general observations on Latin American penal practices, followed in successive chapters by a more detailed exposition of the penal systems of Panama, Colombia, Peru, Bolivia, Chile, Argentina, and Brazil. As might be expected, he finds wide variation throughout Latin America in penal practices, administration, organization, personnel, classification of prisoners, discipline, work and recreation programs, etc. Where Argentina and Brazil have developed excellent systems of prison construction, and Colombia an advanced program of productive prison labor, other smaller countries lag behind. Running hand in hand with variations in penal practices is a widespread uniformity in the theory of criminology. Involved here is the tendency to interpret human behavior, including its aberrant aspects—such as crime—in terms of biology and its related disciplines rather than in terms of socio-economic conditions such as poverty, unemployment, faulty home or educational background, and similar environmental factors, with which we supplement the biological factor in our "multiple causation" explanation of human behavior. This emphasis on the biological factor in criminal causation has a marked influence on the methods of penology, including administration of classification systems and diagnostic clinics. A final chapter on "Intra-American Coöperation in Penology" considers existing points of contact between penologists in Latin America and the United States and suggests a closer relationship, enriched by a more fruitful exchange of literature. While this book contains much that is of interest on Latin American penology, initial doubts as to the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

wisdom of such a sweeping survey, based on so slender a foundation of time and study, are not readily dispelled by the results. A list of journals of penology published in South America is included, and an index of subjects and persons is appended.—FRANCIS R. AUMANN.

In his thin booklet, *The Negro and the Post-War World; A Primer* (Washington, D. C.: Minorities Publishers, 1946, pp. 95, $1.50), Dr. Rayford Logan covers in rapid succession the political and economic status of Negro people throughout the world. In specific chapters on Africa, the colonial West Indies, Latin America, and the United States and Canada, the conditions of labor, of literacy, suffrage, taxation, and participation in political life are examined. Professor Logan's earlier volume, *The Senate and the Versailles Mandate System* (cf. this REVIEW, February, 1946, p. 158), outlined the rôle of minorities and of racial problems in the world politics of a generation ago. The present work similarly exhibits a tendency toward special pleading which, in the mind of this reviewer, is quite justifiable. But it is special pleading none the less. Tactically, it may be questioned whether Dr. Logan's last paragraph will arouse widespread sympathy: "I can picture an international conference, not more than twenty-five years from now, in which a black delegate will rise and declare: 'Gentlemen: five hundred years is long enough for any people to be held in bondage, degraded, spit upon, exploited, disfranchised, segregated, lynched. Here is the formula for a home-manufactured atomic bomb. Give us liberty, or we will give you death.' " The United Nations Charter employs statements of high ideals regarding respect for human rights without distinction of race, which did not appear in the Covenant of the League of Nations. But the author believes that the Charter's prohibitions of interference within the domestic jurisdiction of any state will allow discriminating practices to continue. Dr. Logan is skeptical about the Trusteeship Council, which he doubts will administer many territories; its powers in any event will be woefully small. He sees "in the growing power of labor in international affairs the best hope for a fuller life for Negroes . . . ." The Labor party may lead the dependent peoples of the British Empire to independence or self-government, as an alternative to the dependent peoples of the world turning in despair to Russia as their only salvation.—WILLARD F. BARBER.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

MULFORD Q. SIBLEY
AND
MARJORIE H. SIBLEY
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

Books and Pamphlets

Addison, William. American Indian education; government schools and economic progress. Pp. 135. N. Y.: King's Crown Press. 1946.

Beckett, Paul, and McNutt, W. L. The direct primary in New Mexico. Pp. 34. Albuquerque: Univ. of N. M. 1947.

Bureau of Public Administration. The university bureaus of public administration. Pp. 87. University: Univ. of Ala. 1946.

Committee on Public Debt Policy. Our national debt after great wars. Pp. 12. Com. on Pub. Debt Policy, N. Y.: 26 Liberty St. 1947.

Committee on Public Debt Policy. Our national debt and the banks. Pp. 18. N. Y.: Com. on Pub. Debt Policy, 26 Liberty St. 1947.

Corwin, Edward S. Total war and the constitution; five lectures. Pp. 182. N. Y.: Knopf. 1947.

Crenshaw, Ollinger. The slave states in the presidential election of 1860. Pp. 332. Baltimore: Johns Hopkins Press. 1946.

Deane, John R. The strange alliance; the story of our efforts at wartime cooperation with Russia. Pp. 352. N. Y.: Viking. 1947.

Feldman, Herman, ed. Labor relations and the public. Pp. 316 (Annals Am. Acad. Pol. and Soc. Sci., Nov., 1946). Philadelphia.

Forthal, Sonya. Cogwheels of democracy; a study of the precinct captain. Pp. 106. N. Y.: William-Frederick. 1946.

George, Willis De Vere. Surreptitious entry [secret service]. Pp. 214. D. Appleton-Century. 1946.

Graves, W. Brooke. American state government; 3rd ed. Pp. 1094. Boston: D. C. Heath. 1946.

Greenman, Russell L., and Greenman, Elizabeth B. Getting along with unions. Pp. 167. N. Y.: Harper. 1947.

Hansen, Alvin Harvey. Economic policy and full employment. Pp. 352. N. Y.: Whittlesey House, McGraw-Hill. 1947.

Hatch, Alden. Franklin D. Roosevelt; an informal biography. Pp. 421. N. Y.: Holt. 1947.

Iserman, Theodore R. Industrial peace and the Wagner act. Pp. 91. N. Y.: McGraw-Hill. 1947.

Konecky, Eugene M. Monopoly steals FM from the people. Pp. 48. N. Y.: Provisional Committee for Democracy in Radio. 1946.

Konvitz, Milton R. The constitution and civil rights. Pp. 264. N. Y.: Columbia Univ. Press. 1947.

Latty, E. R., ed. Housing. Pp. 205. (Law and Contemp. Prob.-Vol. XII, No. 1). Durham (N. C.): Duke Univ. Press. 1947.

Lerner, Abba Ptacha, and Graham, Frank Dunstone, eds. Planning and paying for full employment. Pp. 222. Princeton, N. J.: Princeton. 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Leslie, Louis A., comp. Heard in Congress; two hundred thousand words of dictation from the Congressional Record. Pp. 448. N. Y.: Gregg Pub. Co. 1946.

Madison, Charles A. Critics and crusaders; a century of American protest. Pp. 584. N. Y.: Holt. 1947.

Morgenstern, George. Pearl Harbor; the story of the secret war. Pp. 440. N. Y.: Devin-Adair. 1947.

Plumb, Ralph G. Succession in public office; a study of resignations, removals, retirements. Pp. 170. Manitowoc (Wis.): Bradt Printing Co. 1946.

Post, Charles G., ed. Twenty cases on the constitution for an introductory course in American government. Pp. 299. Poughkeepsie (N. Y.): Vassar College. 1946.

Sayre, W. S. An outline of American government; 9th ed. Pp. 221. N. Y.: Barnes & Noble. 1946.

Stewart, Bryce M., and Couper, Walter J. Reconversion in industrial relations. Pp. 78. N. Y.: Industrial Relations Counselors. RKO Bldg. 1946.

Tannenbaum, Frank. Slave and citizen; the Negro in the Americas. Pp. 150. N. Y.: Knopf. 1947.

Thayer, Vivian Trow. Religion in public education. Pp. 223. N. Y.: Viking. 1947.

Van Deusen, Glyndon Garlock. Thurlow Weed, wizard of the lobby. Pp. 417. Boston: Little, Brown. 1947.

White, William Allen. Selected letters of William Allen White, 1899–1943; ed. by Walter Johnson. Pp. 468. N. Y.: Holt. 1947.

Articles

Administrative Law. Mandamus to review state administrative action. *Foster H. Sherwood.* Mich. Law Rev. Dec., 1946.

Agriculture. Not parity but balance. *Lauren K. Soth.* Antioch Rev. Dec., 1946.

Army and Navy. The personal factor in military justice. *Delmar Karlen.* Wis. Law Rev. July, 1946.

———. Unification for national defense. *T. H. Thomas.* Current Hist. Oct., 1946.

———. Army courts-martial: the double standard. *Samuel Morgan.* Atlan. Mo. Dec., 1946.

———. Samples of the army mind. *J. Frank Dobie.* Harper's. Dec., 1946.

———. Millions of guilty men. [Crime and immorality in the army.] *George H. Weltner.* Harper's. Jan., 1947.

———. The army's plans for the next war. *Donald B. Robinson.* Am. Mercury. Feb., 1947.

Bankruptcy. Liquidation of corporations in bankruptcy reorganization. *William L. Cary.* Defining a preference in bankruptcy. *James A. McLaughlin.* Harvard Law Rev. Dec., 1946

Bar. Thoughts on legal education. *Kenneth K. Luce.* Marquette Law Rev. Dec., 1946.

Business. The entertainment industry and the federal anti-trust law. *Bernard Reich.* So. Calif. Law Rev. Dec., 1946.

———. The New York state department of commerce. *M. P. Catherwood.* State Govt. Jan., 1947.

Candidacies. I run for office. *Richard L. Neuberger.* Harper's. Feb., 1947.

Civil Liberties. The need for a civil rights act in the District of Columbia. *Arthur Christopher, Jr.* Lawyers Guild Rev. Sept.–Oct., 1946.

———. Mr. Justice Murphy, civil liberties, and the Holmes tradition. *V. M. Barnett, Jr.* Cornell Law Quar. Nov., 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

———. Not one cent for religion. *Jerome D. Hannan.* The Jurist. Jan., 1947.

———. Japanese return to the West coast. *Emory S. Bogardus.* Sociology and Soc. Research. Jan.–Feb., 1947.

Congress. Message to the 80th Congress. *Elmer Davis.* Harper's. Jan., 1947.

———. Helping yourself to a good congress. *Labert St. Clair.* Nation's Business. Jan., 1947.

Conservation. Do we need a new land policy? *Leonard A. Salter, Jr.* Jour. of Land and Pub. Util. Econ. Nov., 1946.

Constitutions. Amending and revising state constitutions. *J. E. Reeves and K. E. Vanlandingham.* Ky. Law Jour. Jan., 1947.

Crime and Criminal Law. Felonious assault as symptom of abnormal sexuality. *Benjamin Karpman.* The adolescent in court. *Paul W. Tappan.* Correctional objectives today. *Edmund R. East.* Study of psychopathic federal offenders. *Hulsey Cason* and *M. J. Pescor.* Jour. of Crim. Law & Criminol. Sept.–Oct., 1946.

———. Improving probation in Nebraska. *L. B. Orfield.* Neb. Law Rev. Nov., 1946.

———. Twilight zones in probation. *Irving E. Cohen.* Jour of Crim. Law and Criminol. Nov.–Dec., 1946.

———. Pattern of murder in insanity. *Louis H. Cohen* and *Thomas E. Coffin.* Jour. of Crim. Law and Criminol. Nov.–Dec., 1946.

———. New federal criminal procedure in operation. *Alexander Holtzoff.* Jour. of Am. Judicature Soc. Dec., 1946.

———. Washington studies juvenile delinquency. *A. D. Rosellini.* State Govt. Jan., 1947.

Federal Trade Commission. Get the devil out of business. *Lowell B. Mason.* Nation's Business. Jan., 1947.

Feminine Rights. Should the U.S. constitution guarantee equal rights for women under the law? Pro and con. *Symposium.* Cong. Digest. Dec., 1946.

Foreign Policy. Isolationism and the middle west. *William G. Carleton.* Miss. Valley Hist. Rev. Dec., 1946.

———. Our relations with Latin America. *William H. Shoemaker.* Southwestern Soc. Sci. Quar. Dec., 1946.

———. United States far eastern policy. *Harold M. Vinacke.* Pacific Affairs. Dec., 1946.

———. U.S. strategic bases and collective security. *Hans W. Weigert.* The foreign service in transition. *W. P. Maddox.* For. Affairs. Jan., 1947.

———. Free trade with Canada. *O. G. Villard.* Am. Jour. of Econ. & Sociol. Jan., 1947.

———. A new isolationism. *Patrick M. Boarman.* Cath. World. Jan., 1947.

———. Diplomacy of the dollar—1947. *Herbert Feis.* Atlan. Mo. Jan., 1947.

———. The United States in the far east. *R. W. Van Alstyne.* Current Hist. Jan., 1947.

———. U.S.-Australian relations today. *Werner Levi.* Far Eastern Survey. Jan. 15, 1947.

———. Why we irritate the British. *John Osborne.* Harper's. Feb., 1947.

———. The U.S.A. and British imperialism. *M. J. Bonn.* Pol. Quar. Jan.–Mar., 1947.

General. Some thoughts on the United States. *Correspondent.* Round Table. Dec., 1946.

———. Ilya Ehrenburg's America: translations of six articles published in "Izvestia." *Ilya Ehrenburg.* Harper's. Dec., 1946.

———. Are we politically adolescent? *W. G. Carleton.* Am. Scholar. Winter, 1946–47.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Health. Some essentials in national mental health planning. *Daniel Blain.* Social Service Rev. Sept., 1946.

———. The health of the nation; a plea for public medicine. *Channing Frothingham.* Atlan. Mo. Feb., 1947.

Housing. Housing coöperatives. *I. H. Flamm.* Lawyers Guild Rev. Sept.–Oct., 1946.

———. Housing, the south's number one economic opportunity. *Charles F. Palmer.* Social Forces. Dec., 1946.

———. Housing and birth control. *Mildred Gilman.* Am. Mercury. Jan., 1947.

Intergovernmental Relations. Judicial determination of interstate disputes. *Paul F. Good.* Neb. Law Rev. Nov., 1946.

———. The full faith and credit clause and its relation to due process. *Thomas E. McCarthy.* Rocky Mountain Law Rev. Dec., 1946.

———. Comity of relations between governments of the several states and the national government as affected by federal judicial review. *J. R. Lewis.* Ky. Law Jour. Jan., 1947.

Imperialism. American imperialism: new style. Puerto Rico's bootstraps. *Rexford G.* and *Grace F. Tugwell.* The United States invades Africa. *Earl Parker Hanson.* Harper's. Feb., 1947.

Labor. The fair labor standards act—a legal and economic study. *Herbert Burstein.* Lawyers Guild Rev. Sept.–Oct., 1946.

———. Admission policies of labor unions. *Clyde W. Summers.* Quar. Jour. of Econ. Nov., 1946.

———. Adamic and his work. *Harold Zyskind.* Chicago-Jewish Forum. Winter, 1946.

———. "Belo" revisited [Fair Labor Standards Act—overtime provisions]. *Irving J. Levy.* George Washington Law Rev. Dec., 1946.

———. Strikes and eminent domain. *E. C. Gerhart.* Compulsory arbitration of labor disputes. *C. A. Huebner.* Jour. of Am. Judicature Soc. Dec., 1946.

———. The way to industrial peace. Part II. *Peter F. Drucker.* Harper's. Dec., 1946.

———. John L. Lewis: dictator. *S. K. Ratcliffe.* Contemp. Rev. Jan., 1947.

———. The fair labor standards act. *Leon H. Wallace.* Ind. Law Jour. Jan., 1947.

———. The way to industrial peace. Part III. *Peter F. Drucker.* Harper's. Jan., 1947.

———. Portal to portal pay. *George E. Cotter.* Va. Law Rev. Jan., 1947.

———. The right to join a union. *Clyde Summers.* Col. Law Rev. Jan., 1947.

———. Shall we arbitrate? *J. C. McIntosh.* Pub. Util. Jan. 16, 1947.

———. Labor unions and labor policy. *Leo Wolman.* Yale Rev. Winter, 1947.

———. The right to strike. *Richard E. Danielson.* Atlan. Mo. Feb., 1947.

———. Revise the N.L.R.A. *Morley G. Dilke.* Current Hist. Feb., 1947.

———. Philip Murray. *Will Chasan.* Am. Mercury. Feb., 1947.

Money and Banking. Monetary control under the federal reserve act. *Clark Warburton.* Pol. Sci. Quar. Dec., 1946.

Navigability. The legal concept of navigability vs. navigability in fact. *Harry S. Silverstein, Jr.* Rocky Mountain Law Rev. Dec., 1946.

Panama Canal. Panama futility. *Arthur S. Riggs.* Cath. World. Jan., 1947.

Patents and Copyrights. The general lawyer and patent problems. *Daniel G. Cullen.* Lawyers Guild Rev. Sept.–Oct., 1946.

———. The new trademark act of July 5, 1946. *Rudolf Callmann.* Columbia Law Rev. Nov., 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

———. Invalid patents and price control. *Roscoe Steffan.* Yale Law Jour. Nov., 1946.

———. Compulsory licensing of patents. *Richard Reik.* Am. Econ. Rev. Dec., 1946.

———. The Lanham trademark act. *Bartholomew Diggins.* Georgetown Law Jour. Jan., 1947.

Personalities. Vandenberg of Michigan. *Fred Rodell.* Am. Mercury. Jan., 1947.

Personnel. The punch card in personnel administration. *James G. Stockard.* Counting service for periodic within-grade salary advancements. *Katherine A. Sisk* and *G. L. Scheldrup.* Person. Admin. Nov., 1946.

———. The changing rôle of the U. S. civil service commission. *John McDiarmid.* Am. Pol. Sci. Rev. Dec., 1945.

———. Relations between the budget and personnel agencies. *James E. Webb.* Pub. Personnel Rev. Jan., 1947.

———. Retirement planning for public employees. *A. A. Weinberg.* State Govt. Jan., 1947.

———. The second bonus march. *Sam Stavinsky.* Nation's Business. Jan., 1947.

Planning. The dilemma of prosperity. *David C. Coyle.* Yale Rev. Winter, 1947.

Political Parties. Who owns the parties? *L. L. Bernard.* Social Sci. Jan., 1947.

———. "I voted Republican, but . . . ." *S. Burton Heath.* Harper's. Jan., 1947.

Presidency. An analysis of some of the propaganda features of the campaign of 1940. *Henry O. Evjen.* Southwestern Soc. Sci. Quar. Dec., 1946.

———. President Truman's defeat. *S. K. Ratcliffe.* Contemp. Rev. Dec., 1946.

———. Should the U.S. constitution limit the terms a president may serve? Pro and con. *Symposium.* Cong. Digest. Jan., 1947.

Press and Literature. The commissar and the free lance writer. *George F. Barry.* Cath. World. Jan., 1947.

Public Administration. Separation of functions in the administrative process. *Alfred L. Scanlan.* George Washington Law Rev. Dec., 1946.

———. Federal executive reorganization re-examined; a symposium. Part I. *Fritz Morstein Marx,* ed. Basic problems. *Wayne Coy.* Wartime currents and peacetime trends. *J. P. Harris.* Staffing the presidency. *Don K. Price.* Am. Pol. Sci. Rev. Dec., 1946.

———. The rôle of the lawyer in public administration. *John M. Pfiffner.* So. Calif. Law Rev. Dec., 1946.

———. The responsibility of administrative officials in a democratic society. *David M. Levitan.* Pol. Sci. Quar. Dec., 1946.

Public Debt. The problem of bank-held government debt. *H. C. Carr.* Am. Econ. Rev. Dec., 1946.

Public Utilities. Problems in the appraisal of the railroad land grants. *Charles S. Morgan.* Miss. Valley Hist. Rev. Dec., 1946.

———. The Pittsburgh power strike. *L. D. Farrar.* Pub. Util. Jan. 16, 1947.

———. Will the FPC drive natural gas out of the fuel market? *Samuel H. Crosby.* Pub. Util. Fort. Feb. 13, 1947.

Public Works. Development works and full employment. *D. Christie Tait.* Int. Labour Rev. Nov.–Dec., 1946.

———. Public works policy in the twenties. *E. Jay Howenstine, Jr.* Soc. Research. Dec., 1946.

Race Relations. American race relations and status structure. *Norman D. Humphrey.* Social Sci. Jan., 1947.

Rationing and Price Control. Gasoline rationing in the United States. II. *James A. Maxwell.* Quar. Jour. of Econ. Nov., 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

———. Price control in New England during the revolution. *Kenneth Scott.* New England Quar. Dec., 1946.

Social Security. Unemployment compensation in Wisconsin. *Walter A. Morton.* Social Service Rev. Sept., 1946.

———. Fifteen years more of workmen's compensation in Iowa. *Maurice H. Merrill.* Iowa Law Rev. Nov., 1946.

———. Limitation of coverage under a policy of workmen's compensation insurance. *Ben. R. Miller.* Tulane Law Rev. Dec., 1946.

Supreme Court. Politics and value-systems; the supreme court, 1945–1946. *G. Herman Pritchett.* Jour. of Pol. Nov., 1946.

Taxation. An ounce of prevention; a study in corporate tax avoidance. *Harrop A. Freeman* and *Lewis H. Kirschner.* Columbia Law Rev. Nov., 1946.

———. The octroi and airplane—a reconsideration of some old problems of local taxation and of commerce among the several states. *A. E. Sutherland, Jr.,* and *Stephen Vinciguerra.* Cornell Law Quar. Nov., 1946.

———. Federal tax effects of powers of management and control over trust investments. *Emory S. Naylor, Jr.* Ill. Law Rev. Nov.–Dec., 1946.

———. The burden of import duties. *E. R. Rolph.* Am. Econ. Rev. Dec., 1946.

———. Federal tax reform. *Henry C. Simons.* Univ. of Chicago Law Rev. Dec., 1946.

———. The problem of tax exempt property in Colorado. *Earl C. Crockett.* Rocky Mountain Law Rev. Dec., 1946.

———. When tax relief is not tax relief. *Leonard Houghton.* Taxes. Jan., 1947.

———. Harold Knutson—three decades of tax "know-how." *Larston D. Farrar.* Taxes. Jan., 1947.

———. Practical farm tax problems. *Walter B. Keaton.* Ind. Law Jour. Jan., 1947.

———. Federal tax liens and their enforcement. *Samuel O. Clark, Jr.* Va. Law Rev. Jan., 1947.

———. Tax problems of small business. *Russell S. Bock.* Taxes. Feb., 1947.

Territories and Dependencies. The Guam congress. *Roy E. James.* Pacific Affairs. Dec., 1946.

———. Statehood for Alaska. *George Sundborg.* State Govt. Jan., 1947.

Tort Claims. The federal tort claims act—a statutory interpretation. *I. M. Gottlieb.* Georgetown Law Rev. Nov., 1946.

Transportation. Regulation of rates in air transportation; part I. *W. C. Burt* and *James L. Highsaw, Jr.* La. Law Rev. Nov., 1946.

TVA. The TVA program and the war effort. *L. L. Durisch.* Jour. of Pol. Nov. 1946.

FOREIGN AND COMPARATIVE GOVERNMENT

Books and Pamphlets

Allan, J. A. Men and manners in Australia; a social and economic sketch history. Pp. 176. S. Pasadena (Cal.): P. D. & Ione Perkins. 1946.

Ardyonne, Michael. A nation is born: a defence of the Malayan Union. Pp. 95. London: Falcon. 1946.

Blair, Dorian. Do you really know Russia? Pp. 54. London: Valiant Publns. 1946.

Boeke, J. H. The evolution of the Netherlands Indies economy. Pp. 190. N. Y.: Inst. of Pacific Relations. 1946.

Brant, Irving. New life in Poland. Pp. 64. London: Dobson, 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Brockway, Fenner. German diary. Pp. 148. London: Gollancz. 1946.

Brockway, Fenner. Socialism over 60 years. Pp. 414. London: Allen & Unwin. 1946.

Cressey, George B. The basis of Soviet strength. Pp. 288. London: Harrap. 1946.

Feiling, Keith. The life of Neville Chamberlain. Pp. 476. London: Macmillan. 1946.

Footman, David. The primrose path; a life of Ferdinand Lassalle. Pp. 251. London: Cresset Press. 1946.

Hewlett, John Henry. Like moonlight on snow; the life of Simon Iturri Patiño. Pp. 292. N. Y.: McBride. 1947.

Hoare, Sir Samuel. Complacent dictator [Franco]. Pp. 340. N. Y.: Knopf. 1947.

Hobman, Joseph Burton, ed. Palestine's economic future. Pp. 310. N. Y.: W. S. Heinman. 1946.

Hughlett, Lloyd J., ed. Industrialization of Latin America. Pp. 517. N. Y.: McGraw-Hill. 1946.

Kao, Ping-shu. Foreign loans to China. Pp. 62. N. Y.: Sino-Internatl. Econ. Research. Center, 86 Riverside Drive. 1946.

Keith, Elizabeth, and *Scott, Elspet K. R.* Old Korea. Pp. 72. London: Hutchinson. 1946.

Knight-Patterson, W. M. Germany; from defeat to conquest, 1913–1933. Pp. 672. N. Y.: Macmillan. 1947.

Koestler, Arthur. Thieves in the night [Palestine]. Pp. 353. London: Macmillan. 1946.

Lenin, N. Suppressed testament of Lenin; with On Lenin's testament, by Leon Trotsky. Pp. 48. N. Y.: Pioneer Pubrs. 1946.

Luxemburg, Rosa. Letters from prison; trans. Pp. 48. London: Socialist Bk. Center. 1946.

McCabe, Joseph. The history of flagellation; the whip as an instrument of punishment, torture, self-beatings, religion, and erotic stimulation. Pp. 96. Girard (Kans.): Haldeman-Julius. 1946.

Meek, Charles K. Land law and custom in the colonies. Pp. 337. N. Y.: Oxford. 1946.

Moore, R. C. Piety and poverty in Chile; a study of the economic and social effects of Roman Catholicism on Chile. Pp. 144. Nashville (Tenn.): Broadman Press. 1946.

Mullally, Frederic. Fascism inside England. Pp. 100. London: Claud Morris. 1946.

Read, Harlan E. Fighters for freedom; the story of liberty throughout the ages. Pp. 287. N. Y.: R. M. McBride. 1946.

Reischauer, Edwin O. Japan, past and present. Pp. 218. N. Y.: Knopf. 1947.

Palencia, Isabelde. Alexandra Kollontay, ambassadress from Russia. Pp. 309. N. Y.: Longmans. 1947.

Schuschnigg, Kurt von. Austrian requiem; trans. Pp. 333. N. Y.: Putnam. 1946.

Sternberg, Fritz. The coming crisis; tr. from the German by Edward Fitzgerald. Pp. 288. N. Y.: John Day. 1947.

Tripp, Myron L. The Swiss and the United States constitutional systems; a comparative study. Pp. 247. Paris: Librairie Sociale et Économique. 1940.

Tugwell, Rexford G. The stricken land; the story of Puerto Rico. Pp. 735. Garden City (N. Y.): Doubleday. 1946.

Twitchell, K. S., and *Jurji, Edward J.* Saudi Arabia; with an account of the development of its natural resources. Pp. 205. Princeton, N. J.: Princeton Univ. Press. 1947.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Warburg, James P. Germany; ration or no-man's-land. Pp. 62. N. Y.: Foreign Policy Assoc. 1946.

Articles

Australia. The defence power of the commonwealth in time of war. *Geoffrey Sawyer.* Australian Law Jour. Dec. 13, 1946.

———. Reconstruction in Australia. *C. Hartley Grattan.* Current Hist. Feb., 1947.

Austria. Austria infelix. *Karl Gruber.* For. Affairs. Jan., 1947.

Belgium. Should King Leopold abdicate? *Ruth A. Elliott.* Cath. World. Jan., 1947.

Brazil. Brazil. *Hubert Herring.* Yale Rev. Winter, 1947.

British Commonwealth. Canada's ties to Britain. *Alzada Comstock.* Current Hist. Oct., 1946.

———. Objectives and methods of exchange control in the United Kingdom during the war and postwar transition. *F. Rona.* Economica. Nov., 1946.

———. Self-government of British dependencies. *Josephine Kamm.* World Affairs. Dec., 1946.

Canada. Asiatics in Canada. *H. F. Angus.* Pacific Affairs. Dec., 1946.

———. The determinants of Canadian immigration policy. *Editors.* Round Table. Dec., 1946.

———. The Rand formula; subsidiary and quasi-legal aspects [labor relations]. *Harold J. Clawson.* Some notes on the income taxation of farmers. *G. W. Auxier.* Saskatchewan examines penal reform. *Stuart K. Jaffary.* Canadian Bar. Rev. Dec., 1946.

———. What's happening to social credit. *Doris French.* Justice and Japanese Canadians. *Edith Fawke.* Can Forum. Jan., 1947.

———. Labor's postwar charter. *E. B. Jolliffe.* Can. Forum. Feb., 1947.

———. America's choice in China. *Adie Suehsdorf.* Am. Scholar. Winter, 1946–47.

———. Our guilt in China. *Herbert K. Abrams.* Chicago-Jewish Forum. Winter, 1946.

———. Emergency relief needs and measures in China. *Donald S. Howard.* Social Service Rev. Sept., 1946.

———. The Chinese revolution. *Flora Bridges.* Current Hist. Feb., 1947.

———. China in ferment. *Lawrence K. Rosinger.* For. Policy Rep. Jan. 1, 1947.

———. Postwar banking in Shanghai. *John Ahlers.* Pacific Affairs. Dec., 1946.

France. Le nouveau code de la nationalité française. *Pierre Louis-Lucas.* Rev. Critique de Droit Int. Jan.–June, 1946.

———. Some sources on the resistance movement in France during the nazi occupation. *Fred L. Hadsel.* Jour. of Mod. Hist. Dec., 1946.

———. La fouction gouvernementale. *Georges Burdeau.* Le sort de l'ouvrier français sous le second empire. *Paul Louis.* Les organismes d'application de la legislation agricole. *René Cercler.* Rev. Pol. et Parl. Dec., 1946.

———. L'economie polonaise et le plan national de reconstruction (1946–1949). *Edward Hempel.* Rev. Pol. et Parl. Dec., 1946.

———. The governance of France. *Editors.* Round Table. Dec., 1946.

———. The new French republic. *W. W. Crotch.* Contemp. Rev. Dec., 1946.

———. The fourth French republic. *E. J. Knapton.* Current Hist. Feb., 1947.

———. The political situation in France. *Dorothy M. Pickles.* Pol. Quar. Jan.–Mar., 1947.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

General and Comparative. The elimination of German minorities in southeastern Europe. *J. B. Schechtman.* Jour. of Cent. Eur. Affairs. July, 1946.

———. The method of the Roman jurists. *K. Kagan.* Tulane Law Rev. Dec., 1946.

———. Newspapers and the law of libel. *Alexander Stark.* Canadian Bar Rev. Dec., 1946.

———. A political scientist looks at military government in the European theater of operations. *Harold Zink.* Am. Pol. Sci. Rev. Dec., 1946.

———. Elections; to right and to left. *F. W. Foreign Correspondents.* Free World. Dec., 1946.

———. "Subject," "citizen," "national," and "permanent allegiance." *Maximilian Koessler.* Yale Law Jour. Nov., 1946.

———. Population problems in the Pacific. *Shu-Ching Lee.* Jour. of Land and Pub. Util. Econ. Nov., 1946.

———. The dawn of nationalism in Europe. *Halvdan Koht.* Am. Hist. Rev. Jan., 1947.

Germany. The organization of control in the British zone in Germany. *D. R. Woodman.* Pub. Admin. Autumn, 1946.

———. They are not expendable; the homeless and refugee children in Germany. *Ernst Papanek.* Social Service Rev. Sept., 1946.

———. Profits under nazi planning. *Arthur Schweitzer.* Quar. Jour. of Econ. Nov., 1946.

———. The four out of hand; plight of Germany under control. *Editors.* Round Table. Dec., 1946.

———. The political reëducation of the Germans. *Moses Moskowitz.* Pol. Sci. Quar. Dec., 1946.

———. Carl von Ossietzky: in memoriam. *Otto Lehmann-Russbueldt.* Contemp. Rev. Dec., 1946.

———. The British zone of Germany. *Geoffrey Gorer.* Fortnightly. Dec., 1946.

———. The German situation today. *R. W. Keyserlingk.* Int. Jour. Winter, 1946–47.

———. The partition of Germany and the unity of Europe. *Eugene V. Rostow.* Va. Quar. Rev. Winter, 1947.

———. Hitler's concentration camps—an examination of conscience. *Eugen Kogon.* Rev. of Pol. Jan., 1947.

———. Germany approaches the cross-roads. *Jonathan Blow.* Quarterly Rev. Jan., 1947.

———. No German policy is possible. *Joel Carmichael.* Parties and classes in postwar Germany. *Hans Meyerhoff.* So. Atlan. Quar. Jan., 1947.

———. The personality of inmates of concentration camps. *Herbert A. Bloch.* Am. Jour. of Sociol. Jan., 1947.

Great Britain. The machinery of government. *John Anderson.* The administration in 1945 of some tribunals appointed by the minister of labour and national service. *D. Scott Stokes.* Postwar housing finance. *J. P. Macey.* The transition to the national health service. *H. E. Martin.* Pub. Admin. Autumn, 1946.

———. The new British national health service. *John Moss.* Social Service Rev. Sept., 1946.

———. Truth about the Tories. *Clement Davies.* Legislation and public morality. *J. C. G. Ruston.* Liberal. Oct.–Nov., 1946.

———. Some arguments used by English pamphleteers, 1697–1700, concerning a standing army. *E. Arnold Miller.* Jour. of Mod. Hist. Dec., 1946.

———. The British Labor party and domestic reform. *Mary E. Murphy.* Jour. of Pol. Econ. Dec., 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

———. The year at home. *W. Hamilton Kerr.* Nine. Cent. and After. Dec., 1946.

———. Communism and the trade unions. *J. H. Harley.* Contemp. Rev. Dec., 1946.

———. Bevin and his critics. *Raymond Blackburn.* Hopeful factors in the British economy. *S. R. Dennison.* For. Affairs. Jan., 1947.

———. Britain and the American elections. *George Catlin.* Fortnighly. Jan., 1947.

———. The party system. *Viscount Samuel.* Contemp. Rev. Jan., 1947.

———. Soft justice [crime]. *Leo Page.* Quarterly Rev. Jan., 1947.

———. Twenty-one "rebels" and a letter [Labour party "revolt"]. *F. A. Voigt.* Nine. Cent. and After. Jan., 1947.

———. Labor and the empire. *D. C. MacDonald.* Can. Forum. Feb., 1947.

———. Britain's nationalization growing pains. *Reginald Hobbs.* Pub. Util. Fort. Feb. 13, 1947.

———. A journey through socialism [Labor government]. *J. Lacey Reynolds.* Nation's Business. Feb., 1947.

———. The nationalisation of the railways. *Fabian.* Has labour come to stay? *H. L. Beales.* Pol. Quar. Jan.–Mar., 1947.

———. Britain under planning. *John Chamberlain.* Yale Rev. Winter, 1947.

Haiti. Haiti's economic bondage. *Bernard Seeman.* Am. Mercury. Jan., 1947.

Hong Kong. Hong Kong dilemma. *Hilda Selwyn-Clarke.* Far Eastern Survey. Jan. 15, 1947.

India. Hindus and Moslems in India. *J. C. French.* Dalhousie Rev. Oct., 1946.

———. Adult education in India. *Surya Sardesai.* Free World. Dec., 1946.

———. India; Lord Wavell's achievement. *Editors.* Round Table. Dec., 1946.

———. Politics and peanuts: a visit with Mahatma Gandhi. *Louis Fischer.* Atlan. Mo. Jan., 1947.

———. The Indian princes and the cabinet mission. *William Barton.* Quarterly Rev. Jan., 1947.

———. Wishful thinking about India. *Arthur Moore.* Nine. Cent. and After. Jan., 1947.

———. The problem of union in India. *Bishop Thomas Pothacamury.* Cath. World. Feb., 1947.

———. India; from company to crown. *Alice B. McGinty.* Current Hist. Feb., 1947.

Indo-China. Conflict in Indo-China. *Editors.* Amerasia. Jan., 1947.

Indonesia. Indonesia at the crossroads. *J. A. Verdoorn.* Conditions for Indonesian independence. *J. H. Boeke.* Pacific Affairs. Dec., 1946.

———. The Netherlands and Indonesia. *Ronald S. Kain.* Yale Rev. Winter, 1947.

———. The rise of the Indonesian republic. *Editors.* Amerasia. Jan., 1947.

Italy. Postwar inflation and fiscal-monetary policy in Japan. *K. K. Kurihara.* Am. Econ. Rev. Dec., 1946.

———. Reconstruction in Italy. *Richard Goold-Adams.* Quarterly Rev. Jan., 1947.

———. Christian democracy in Italy. *Mario Einaudi.* Rev. of Pol. Jan., 1947.

Jugoslavia. Nationality problems and partisan Yugoslavia. *Dinko Tomašic.* Jour. of Cent. Eur. Affairs. July, 1946.

———. In defense of Mihailovich. *Constantin Fotitch.* Atlan. Mo. Dec., 1946.

———. How UNRRA bolstered Tito. *Eric L. Pridonoff.* Am. Mercury. Jan., 1947.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Malaya. Britain faces a new Malaya. *Editors.* Amerasia. Jan., 1947.

Mexico. The contested Mexican election of 1812. *Nettie Lee Benson.* Hisp. Am. Hist. Rev. Aug., 1946.

Netherlands. New trends in Dutch foreign policy. *J. Barents.* For. Affairs. Jan., 1947.

New Caledonia. New Caledonia and the war. *G. F. R.* Pacific Affairs. Dec., 1946.

Palestine. Impasse in the holy land. *Claris Edwin Silcox.* Univ. of Toronto Quar. Jan., 1947.

———. The zionist illusion. *W. T. Stace.* Atlan. Mo. Feb., 1947.

Philippines. Roxas violates constitution. *Ramon Diokno.* Amerasia. Dec., 1946.

———. Unfinished business in the Philippines. *Louis H. Pink.* For. Affairs. Jan., 1947.

Poland. Poland—past and present. *W. J. Rose.* Int. Jour. Winter, 1946–47.

———. The educational institutions of Polish Jewry (1921–1934). *Nathan Eck.* Jewish Soc. Studies. Jan., 1947.

Rumania. Rumania after the elections. *A. J. Fischer.* Contemp. Rev. Jan., 1947.

Siam. Incident in Siam. *Dillon Ripley.* Yale Rev. Winter, 1947.

South Africa. The criminal liability of a company, its directors and its servants. *T. B. Barlow.* So. Afr. Law Jour. Nov., 1946.

———. Colour policy in South Africa. *Correspondent.* Round Table. Dec., 1946.

———. J. C. Smuts: South Africa. *Alice R. Craemer.* Current Hist. Jan., 1947.

Soviet Union. Soviet family law in the light of Russian history and Marxist theory. *H. J. Berman.* Yale Law Jour. Nov., 1946.

———. Non-orthodox religions in the U.S.S.R. *John S. Curtiss.* Crop migrations in the Soviet Union. *Michael Shapovalov.* Ferrous metallurgy in the new five-year plan. *N. Yeremenko.* Am. Rev. on the Sov. Union. Nov., 1946.

———. The Russian succession—II *Edward Crankshaw.* Nat. Rev. Dec., 1946.

———. Royal commission [Russia spies]. *F. A. Voigt.* Nine. Cent. and After. Dec., 1946.

———. The national income of Soviet Russia. *Julius Wyler.* Soc. Research. Dec., 1946.

———. Reforms under Czar Alexander I; French and American influences. *Geroge Vernadsky.* The present purge in the U.S.S.R. *Barrington Moore, Jr.* Rev. of Pol. Jan., 1947.

———. Marriage and divorce in Soviet law. *Vladimir Gsovski.* Georgetown Law Jour. Jan., 1947.

INTERNATIONAL RELATIONS

Books and Pamphlets

Carr, Edward Hallet. The Soviet impact on the western world. Pp. 121. N. Y.: Macmillan. 1947.

Ciechanowski, Jan. Defeat in victory. Pp. 413. N. Y.: Doubleday. 1947.

Feis, Herbert. Seen from E. A.; three international episodes. Pp. 331. N. Y.: Knopf. 1947.

Hawtrey, R. G. Bretton Woods; for better or worse. Pp. 142. London: Longmans. 1946.

Heilperin, Michael A. The trade of nations. Pp. 260. N. Y.: Knopf. 1947.

Huszar, George B., ed. Persistent international issues. Pp. 262. N. Y.: Harper. 1947.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Hyamson, A. M. A dictionary of international affairs. Pp. 353. London: Methuen. 1946.

Jones, J. Mervyn. Full powers and ratification: study in development of treaty-making procedure. Pp. 182. London: Cambridge Univ. Press. 1946.

Knutson, Albert C. The philosophy of war and peace. Pp. 221. N. Y.: Abingdon-Cokesbury. 1947.

Levitan, Joseph D. Our kampf; our campaign to win the peace. Pp. 60. N. Y. William-Frederick Press. 1946.

Mukerjee, Radhakamal. Races, lands, and food; a program for world subsistance; introd. by H. L. Ickes. Pp. 112. N. Y.: Dryden Press. 1946.

Nearing, Scott. War or peace? Pp. 96. N. Y.: Island Press. 1946.

Social Action. UNRRA and after. Pp. 39. Social Action. 1946.

Thompson, W. S. Population and peace in the Pacific. Pp. 397. Chicago: Univ. of Chicago Press. 1946.

Thomson, David, and *Others.* Patterns of peacemaking. Pp. 399. N. Y.: Oxford. 1945.

Articles

Aëronautics. International private air law and the carriage by air act, 1946. *A. M. Conradie.* So. Afr. Law Jour. Nov., 1946.

Australia. Australia and the international labour conventions. *K. H. Bailey.* Int. Labour Rev. Nov.–Dec., 1946.

———. Australia in world affairs. *C. Hartley Gratton.* Current Hist. Jan., 1947.

Atomic Energy. Control of atomic energy by the United Nations. *Emile Benoit-Smullyan.* Antioch Rev. Dec., 1946.

———. If the atomic bomb had not been used. *Karl T. Compton.* Atlan. Mo. Dec., 1946.

———. The decision to use the atomic bomb. *Henry L. Stimson.* Harper's. Feb., 1947.

British Commonwealth. The British dominions and regionalism. *Werner Levi.* Rev. of Pol. Jan., 1947.

Canada. Canada's international mission. *George Adamkiewicz.* Dalhousie Rev. Oct., 1946.

———. The B.C.A.T.P. and defence policy. *Terence Sheard.* Int. Jour. Winter, 1946–47.

China. China: equality. *No-Yong Park.* Current Hist. Dec., 1946.

Disarmament. Disarmament in the atomic age. *Allen W. Dulles.* For. Affairs. Jan., 1947.

Food. World nutrition and agrarian stability—proposals for a food board. *Blair Bolles.* For. Policy Rep. Dec. 1, 1946.

Germany. Germany: self-government. *Sidney B. Fay.* Current Hist. Dec., 1946.

———. Germany: test tube of peace. *Ross N. Berkes.* Am. Scholar. Winter, 1946–47.

Great Britain. Britain and Siam; the latest phase. *Alec Peterson.* Pacific Affairs. Dec., 1946.

———. Franco-British union. *B. S. Townroe.* Nat. Rev. Dec., 1946.

———. Great Britain: freedom. *Alzada Comstock.* Current Hist. Dec., 1946.

———. France and the Latins: protection. *E. J. Knapton.* Current Hist. Dec., 1946.

———. Morals and foreign policy. *R. Arnold Jones.* Contemp. Rev. Dec., 1946.

International Law. Enemy prisoners of war. *Martin Tollefson.* Iowa Law Rev. Nov., 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

———. Responsibility of states for injuries to individuals. *Philip C. Jessup.* Columbia Law Rev. Nov., 1946.

International Trade and Finance. Impact of U.S. economy on world trade. *H. H. Hutcheson.* For. Policy Rep. Dec. 15, 1947.

———. Coöperatives, governments, and world trade. *M. D. Lincoln.* Free World. Dec., 1946.

———. The conflict over trade ideologies. *Herbert Feis.* For. Affairs. Jan., 1947.

Japan. Japan: regeneration. *Siegfried Garbuny.* Current Hist. Dec., 1946.

Korea. Korean dilemma. *Marion M. Montague.* World Affairs. Dec., 1946.

Labor. International labour legislation. *Henry Binet.* Canadian Bar Rev. Dec., 1946.

———. The W.F.T.U. at work. *Editors.* Labour. Jan., 1947.

Peace Problems. Le bilan moral de l'après guerre. *Maria Rossi.* Rev. de Droit Int. Apr.–Sept., 1946.

———. Peace at Paris, 1946; part II. *Editors.* Current Hist. Oct., 1946.

———. Trieste. *Richard Schuller.* Soc. Research. Dec., 1946.

———. A year of peace. *Walter Lippmann.* Atlan. Mo. Dec., 1946.

———. The "redefinition" of Germany and Europe's peace. *Michael A. Heilperin.* The big three; their aims and interests. *Ross W. Collins.* Int. Jour. Winter, 1946–47.

———. Peacemaking at Paris: success, failure, or farce? *Harold Nicolson.* For. Affairs. Jan., 1947.

———. The straits; crux of world politics. *Ahmed Sükrü Esmer.* For. Affairs. Jan., 1947.

———. Freedom of the Danube. *Charlotte B. Rasmussen.* Current Hist. Jan., 1947.

———. Japan and Germany; problems in reëducation. *George F. Zook.* Int. Conciliation. Jan., 1947.

———. Evaluating the Potsdam plan. *F. A. Hermens.* Am. Jour. of Econ. & Sociol. Jan., 1947.

———. The real issues in Europe. *Doreen Warriner.* Pol. Quar. Jan.-Mar., 1947.

Population. Population and power. *Kimball Young.* Social Forces. Oct., 1946.

Regions. A Latin American bloc? *Lisandro Montes.* Free World. Dec., 1946.

———. Latin America; the little forty-six. *H. B. Murkland.* Current Hist. Dec., 1946.

Soviet Union. The Soviet Union; cordon sanitaire. *Frederick L. Schuman.* Current Hist. Dec., 1946.

———. L'U.R.S.S. et la guerre. *François de Romainville.* Rev. Pol. et Parl. Dec., 1946.

———. Basic elements in Soviet-American relations. *Calvin B. Hoover.* Va. Quar. Rev. Winter, 1947.

———. The expansion of Russia. *A. L. Kennedy.* Quarterly Rev. Jan., 1947.

———. Russia and the powers. *M. Philips Price.* Contemp. Rev. Jan., 1947.

Spain. Spain, U.N.O., and Giral. *Arthur F. Loveday.* Quarterly Rev. Jan., 1947.

Switzerland. As Switzerland sees it. *Carl J. Friedrich.* Atlan. Mo. Dec., 1946.

———. Switzerland and Europe. *W. W. Schutz.* Contemp. Rev. Dec., 1946.

Trusteeships. Mandates and trusteeships; with particular reference to Palestine. *W. E. Rappard.* Jour. of Pol. Nov., 1946.

Vatican. Reflections on the nature and status of concordats. *Willibald M. Plöchl.* The Jurist. Jan., 1947.

———. Pope Pius XII, apostle of world peace. *D. A. MacLean.* Am. Jour. of Econ. & Sociol. Jan., 1947.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

War Crimes. Grandes criminels de guerre. *H. Carton de Wiart.* Le troisième Nuremberg. *Emil S. Rappaport.* L'establissement d'une paix durable par l'application d'un noveau droit pénal international. *M. Engelson.* La procédure à Nuremberg. *A. Trainine.* La signification suprême du procès de Nuremberg. *Fred Eccard.* Rev. de Droit Int. Apr.–Sept., 1946.

———. Lessons of Nuremberg. *Felix E. Hirsch.* Current Hist. Oct., 1946.

———. International crimes. *Max Radin.* Iowa Law Rev. Nov., 1946.

———. The Nuernberg trial. *J. J. Parker.* Jour. of Am. Judicature Soc. Dec., 1946.

———. Nuremberg in retrospect. *Editors.* Round Table. Dec., 1946.

———. Nuremberg in retrospect. *Charles E. Wyzanski, Jr.* Atlan. Mo. Dec., 1946.

———. The Nuremberg trial; landmark in law. *Henry L. Stimson.* For. Affairs. Jan., 1947.

———. The Nuremberg trials. *Tappan Gregory.* Conn. Bar Jour. Jan., 1947.

———. The Nürnberg trial. *T. J. Dodd.* Pa. Bar Assoc. Quar. Jan., 1947.

World Culture. Science and world culture. *T. Swann Harding.* Free World. Dec., 1947.

World Organization. La révision des traités et la charte des Nations Unies. *Antonii M. Nicoloff.* Rev. de Droit Int. Apr.–Sept., 1946.

———. The temporary social commission's report to the second session of the economic and social council of UN. *Alice C. Shaffer.* Social Service Rev. Sept., 1946.

———. UNESCO; its purpose and philosophy. *Julian S. Huxley.* Free World. Dec., 1947.

———. An analogy in support of the world court. *John G. Buchanan.* Jour. of Am. Judicature Soc. Dec., 1946.

———. Public opinion and the UN. *Jan Masaryk.* Free World. Dec., 1946.

———. The United States; one world. *R. W. Van Alstyne.* Current Hist. Dec., 1946.

———. Enforcement of world law. *William B. Lloyd, Jr.* World Affairs. Dec., 1946.

———. Peace and law. *F. E. Dessauer.* Int. Jour. Winter, 1946–47.

———. The general assembly in New York. *Ruth C. Lawson.* Current Hist. Jan., 1947.

———. Accomplishments of the commission on narcotic drugs. *George A. Morlock.* Dept. of State Bull. Jan. 19, 1947.

———. The United Nations and world government. *E. C. Lukens.* Pa. Bar Assoc. Quar. Jan., 1947.

———. The work of the general assembly. *Ruth C. Lawson.* Current Hist. Feb., 1947.

World War I. Who won world war I? *Frederick H. Cramer.* Current Hist. Jan., 1947.

World War II. Who won world war II? *Frederick H. Cramer.* Current Hist. Feb., 1947.

LOCAL GOVERNMENT

Books and Pamphlets

De Vore, Harry L., Jr. City on the Potomac; Washington in pen and ink; narrative by Martin Yosiloff. Pp. 113. N. Y.: Beechhurst Press. 1946.

Donnelly, T. C., and *Beckett, Paul.* The soil conservation problem in New Mexico. Pp. 20. Albuquerque: Univ. of N. M. Press. 1946.

Hicks, Granville. Small town. Pp. 276. N. Y.: Macmillan. 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Plank, E. H. A comparison of the assessed and "sales" value of property in Bernalillo county. Pp. 12. Albuquerque: Univ. of N. M. Press. 1947.

Pray, J. C. Post-appropriation budgetary control in Oklahoma. Pp. 27. Norman (Okla.): J. C. Pray. 1946.

Weitenkampf, Frank. Manhattan kaleidoscope. Pp. 290. N. Y.: Scribner. 1947.

Articles

Administration. Coördination and direction of departments. *Five City Managers.* Pub. Management. Oct., 1946.

Appearance of Cities. Improving the appearance of cities. *D. D. Rowlands.* Pub. Management. Jan., 1947.

Budgets. Justifying budgetary requests. *Irving Tenner.* Pub. Management. Oct., 1946.

Chicago Water Diversion. The Chicago water diversion controversy. *Herbert H. Naujoks.* Marquette Law Rev. Dec., 1946.

Health. Participation by state and local health departments in current medical care programs. *Joseph W. Monntin.* Am. Jour. of Pub. Health. Dec., 1946.

———. Postwar control of flies and mosquitoes in public health programs. *Mark D. Hollis* and *Herman L. Fellton.* Am. Jour. of Pub. Health. Dec., 1946.

Local Government Abroad. American versus German city planning. *Martin Wagner.* Jour. of Land and Pub. Util. Econ. Nov., 1946.

———. Children's courts in England. *Basil L. Q. Henriques.* Jour. of Crim. Law and Criminol. Nov.–Dec., 1946.

———. Compulsory acquisition of land by local authorities and procedure at the inquiry tribunals. *J. H. Roberts.* Pub. Admin. Autumn, 1946.

———. De la thèse aux applications dans un canton rural. *Alexander Lefas.* Rev. Pol. et Parl. Dec., 1946.

———. New towns. *Gilbert McAllister.* Pol. Quar. Jan.–Mar., 1947.

Personnel. Civil service selection of policemen. *Raymond A. Kimball.* Jour. of Crim. Law and Criminol. Nov.–Dec., 1946.

———. Management policy on employees. *O. F. Nolting.* In-service training for municipal officials. *A. W. Bromage* and *J. A. Perkins.* Pub. Management. Jan., 1947.

———. How to program municipal services. *H. A. Simon.* Pub. Management. Dec., 1946.

Rainfall. Local government and rainfall. *Herman Walker, Jr.,* and *P. L. Hansen.* Am. Pol. Sci. Rev. Dec., 1946.

Soil Conservation Districts. Soil conservation districts; local democracy in a national program. *Herman Walker, Jr.,* and *W. Robert Parks.* Jour. of Pol. Nov., 1946.

Taxation. Valuation of rural tangible personal property. *Earl K. Turner.* Taxes. Jan., 1947.

Traffic. Better street use with traffic signals. *E. J. Reeder.* Am. City. Jan., 1947.

Urban Land. Monopolistic competition and the use and price of urban land service. *Joseph J. Spengler.* Jour. of Pol. Econ. Oct., 1946.

POLITICAL AND LEGAL PHILOSOPHY

Books and Pamphlets

Bryson, Lyman. Science and freedom. Pp. 202. N. Y.: Columbia Univ. Press. 1947.

Civardi, Luigi. Cristianesimo e vita sociale; 2nd ed. Pp. 119. Rome: Editrice A. V. E. 1945.

De Ruggiero, Guido. Existentialism; tr. from Italian. Pp. 52. London: Secker. 1946.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Dingwall, Eric J. Racial pride and prejudice. Pp. 246. London: Watts. 1946.

Donner, Henry W. Introduction to Utopia. Pp. 119. London: Sidgwick & Jackson. 1945.

Hertzler, J. O. Social institutions; rev. Pp. 356. Lincoln (Neb.): Univ. of Neb. Press. 1946.

Landy, A. Marxism and the democratic tradition. Pp. 220. N. Y. Int. Pubrs. 1946.

Latourette, K. S., ed. The gospel, the church, and the world. Pp. 245. N. Y.: Harper. 1946.

MacIver, Robert M. The web of government. Pp. 498. Macmillan. 1947.

Mill, John S. On liberty; and considerations on representative government; new ed.; ed. by R. B. McCallum. Pp. 324. Oxford (Eng.): B. Blackwell. 1946.

Monnerot, Jules. Les faits sociaux ne sont pas des choses. Pp. 241.

Padover, S. K., comp. Thomas Jefferson on democracy. Pp. 186. N. Y.: Penguin Bks. 1946.

Schumpeter, Joseph A. Capitalism, socialism, and democracy; 2nd ed. Pp. 425. N. Y.: Harper. 1947.

Spahn, Carl A. Staatsmacht und Individualsphäre. Pp. 262. Zurich. Fretz & Wasmuth Verlag Ag. 1944.

Tawney, Richard Henry. Religion and the rise of capitalism; a historical study. New print. Pp. 356. N. Y.: Harcourt. 1947.

Articles

Aristotle. Aristotle's conception of the development and the nature of scientific method. *Richard Mc Keon.* Jour. of the Hist. of Ideas. Jan., 1947.

Baer. On Baer and his philosophy of Jewish history. *Isaiah Sonne.* Jewish Soc. Studies. Jan., 1947.

Balance of Power. The balance of power in society. *Frank Tannenbaum.* Pol. Sci. Quar. Dec., 1946.

Case. The writings of Clarence Marsh Case. *Esther Penchef.* Sociology and Soc. Research. Jan.–Feb., 1947.

Church. The church and the economic order. *M. H. Hunter.* Social Sci. Jan., 1947.

Democracy. De Tocqueville and democracy. *Wyndham Lewis.* Sewanee Rev. Autumn, 1946.

———. Close-up of democracy. *Carl Dreher.* Va. Quar. Rev. Winter, 1947.

———. The philosophic background of christian democracy. *Luigi Sturzo.* Rev. of Pol. Jan., 1947.

———. Democracy in the American tradition. *T. S. Harding.* Am. Jour. of Econ. & Sociol. Jan., 1947.

Emerson. Emerson's pragmatic mood. *Edward C. Lindeman.* Am. Scholar. Winter, 1946–47.

Erasmus. Erasmus on the functions of Christian humanism. *Fritz Caspari.* Jour of the Hist. of Ideas. Jan., 1947.

George. Henry George and Karl Marx. *J. H. Holmes.* Am. Jour. of Econ. & Sociol. Jan., 1947.

Human Nature. Human nature and politics. *Francis G. Wilson.* Jour. of Pol. Nov., 1946.

———. Man versus atom. *Edwin M. Poteat.* Social Sci. Jan., 1947.

Ideals. The conservation and synthesis of values and ideals by institutions. *Radhakamal Mukerjee.* Social Forces. Dec., 1946.

Individual Development. Philosophy of individual development. *G. W. Esty.* Am. Jour. of Econ. & Sociol. Jan., 1947.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Jurisprudence. The trail of the calf. *Max Radin.* Cornell Law Quar. Nov., 1946.

Leibniz. Leibniz's theory of law. *Huntington Cairns.* Harvard Law Rev. Dec., 1946.

Liberalism. Liberalism and individual liberty. *A. Mitchell.* Am. Jour. of Econ. & Sociol. Jan., 1947.

Marx. Marx and the modern mind. *Thomas P. Neill.* Cath. World. Feb., 1947.

Militarism. Military morality. *Howard B. White.* Soc. Research. Dec., 1946.

Neilson. Crusader for justice. *W. Lissner.* Francis Neilson; an appreciation. *J. Hervey.* Am. Jour. of Econ. & Sociol. Jan., 1947.

Nineteenth Century America. Philosophical trends in nineteenth-century America. *Thomas A. Goudge.* Univ. of Toronto Quar. Jan., 1947.

Pegny. The humanism of Pegny. *Rachel Bespaloff.* Rev. of Pol. Jan., 1947.

Personality. Interrelated patterns of community and personality. *Bessie A. McClenahan.* Sociology and Soc. Research. Jan.–Feb., 1947.

Pluralism. Uniformity and pluralism. *Feliks Gross.* Social Sci. Jan., 1947.

Progress. The religion of progress. *Albert Salomon.* Soc. Research. Dec., 1946.

———. The idea of progress. *Sidney B. Fay.* Am. Hist. Rev. Jan., 1947.

Bertrand Russell. A landmark in philosophy. *C. E. M. Joad.* Fortnightly. Jan., 1947.

———. Bertrand Russell's caprice. *John G. Vance.* Nine. Cent. and After. Jan., 1947.

Saint-Simonians. The Jewish Saint-Simonians and socialist antisemites in France. *Zosa Szajkowski.* Jewish Soc. Studies. Jan., 1947.

Science. Social salvation through science. *Jessie Bernard.* So. Atlan. Quar. Jan., 1947.

Shaw. Shaw, war, and peace; 1894–1919. *William Irvine.* For. Affairs. Jan., 1947.

State. The state in the modern world. *Edgar Stern-Rubarth.* Contemp. Rev. Jan., 1947.

Thought and Action. Thought and action; a meditation on the principles of political science. *Helmut Kuhn.* Jour. of Pol. Nov., 1946.

Toynbee. Arnold Toynbee: the boldest historian. *Granville Hicks.* Harper's. Feb., 1947.

Tucker. Georger Tucker: Liberal southern social scientist. *Jessie Bernard.* Social Forces. Dec., 1946.

Von Wiese. Sociology of Leopold von Wiese. *Clement S. Mihanovich.* Sociology and Soc. Research. Jan.–Feb., 1947.

Whitman. Whitman's political thought. *Richmond C. Beatty.* So. Atlan. Quar. Jan., 1947.

Edmund Wilson. The intransigence of Edmund Wilson. *Granville Hicks.* Antioch Rev. Dec., 1946.

Chauncey Wright. Chauncey Wright; radical empiricist. *Joseph L. Blau.* New England Quar. Dec., 1946.

MISCELLANEOUS

Books and Pamphlets

Dublin, L. I., and *Latka, A. J.* The money value of a man; rev. ed. Pp. 231. N. Y.: Ronald Press. 1946.

Du Bois, William Edward Burghardt. The world and Africa; an inquiry into the part which Africa has played in world history. Pp. 288. N. Y.: Viking. 1947.

Articles

Are Professors Dangerous? Are professors dangerous? *C. E. Ayres.* How much academic freedom? *Lynn Landrum.* Southwest Rev. Winter, 1947.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Economics and Law. Economics and the study of law—the contribution of Henry C. Simons. *Wilber G. Katz.* Univ. of Chicago Law Rev. Dec., 1946.

Social Science. Novels and social science. *Norman Ward.* Dalhousie Rev. Oct., 1946.

———. The science legislation and the rôle of the social sciences. *Talcott Parsons.* Am. Sociol. Rev. Dec., 1946.

———. The parallel rôles of physical and social science. *Douglas E. Scates.* Scientific Mo. Jan., 1947.

GOVERNMENT PUBLICATIONS

MILES O. PRICE
Law Library, Columbia University

AMERICAN

UNITED STATES

Civil Service Commission

Efficiency rating system, effective Jan. 1, 1944, amended to Oct., 1946 . . . Washington: Govt. Ptg. Off., 1946. 16p. 5¢.

——— Retirement systems for federal employees; a selected list of references. Washington, 1946. 26 p. (mim.)

Commerce Department

Census bureau. City finances: 1945. Summary of city government finances in 1945. Washington, December, 1946. 11 p. (processed). [The cities covered are those having 1940 populations of over 25,000.]

——— County finances: 1944. Summary of county government finances in 1944. Washington, November, 1946. 15 p. (processed). Preliminary summary.

——— Elections: 1947. Elections calendar for 1947. Washington, 1947. 6 p. (processed).

——— Votes cast in presidential and congressional elections, 1928–1944 [with bibliography]. Washington: Govt. Ptg. Off., 1946. 171 p. 50¢.

——— Governmental organization. Elective offices of state and county governments. Washington, December, 1946. (mim.) (Governmental organization no. 1. No. 2 will be county boards and commissions; No. 3, governmental units overlying city areas.)

——— Governmental debt in the United States: 1946. Preliminary, Washington, December, 1946. 2 p. (processed) (A more detailed analysis, with additional tables, will be published soon.)

——— Government employment. Public employment in October, 1946. Washington, 1947. 2 p. (processed).

——— State employment in 1946. Washington, December, 1946. 10 p. (processed).

——— State finances: 1946. State debt in 1946. Preliminary. Washington, 1947. 7 p. (processed) (comparative tables).

Congress

House of representatives. Banking and currency committee. Anglo-American financial agreement. Hearings . . . 79th Cong., 2d sess., on H.J. Res 311 . . . S.J. Res. 138 . . . Washington: Govt. Ptg. Off., 1946. 675 p.

——— *Foreign affairs committee.* Reorganization of the foreign service . . . Report of the Committee . . . to accompany H.R. 6967. Washington: Govt. Ptg. Off., 1946. 230 p.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

——— *Indian affairs committee.* Removal of restrictions on Indian property and for emancipation of Indians, hearings, 79th Cong., 2d sess. on H.R. 3680, H.R. 3681, and H.R. 3710 . . . Washington: Govt. Ptg. Off., 1946. 47 p. 15 p.

——— *Judiciary committee.* Report of subcommittee 4 pursuant to H. Res. 430, to investigate circumstances with respect to disposition of charges of espionage and possession of documents stolen from secret government files . . . Washington: Govt. Ptg. Off., 1946. 16 p. (H. rp. 2732, 79th Cong., 2d sess.)

——— *Postwar economic policy and planning, Special committee.* Postwar economic policy and planning, 11th [and final] report pursuant to H. Res. 60 . . . Washington: Govt. Ptg. Off., 1946. 115 p. 20¢.

——— *Territories committee.* Enabling the people of Hawaii to form constitution and state government to be admitted into the Union . . . hearings, 79th Cong., 1st-[2d] session, pursuant to H.R. 3643 . . . Washington: Govt. Ptg. Off., 1946. 75 p. 15¢.

Senate, banking, and currency committee. Anglo-American financial agreement. Hearings . . . 79th Cong., 2d sess., on S. J. Res. 138 . . . Washington: Govt. Ptg. Off., 1946. 533 p.

——— *Naval affairs committee.* Common defense department. Unification of armed forces, hearings, 79th Cong., 2d sess., on S. 2044, to promote common defense by unifying departments and agencies of the government relating to common defense . . . Washington: Govt. Ptg. Off., 1946. 351 p. 50¢.

Interior Department

Immigration and naturalization service. Naturalization. Chart, requirements for judicial and administrative naturalization under nationality act of 1940 . . . Washington: Govt. Ptg. Off., 1946. 5¢.

Labor Department

Women's bureau. Legal status of women in the United States, trends in political and civil laws, 1938–1945. Washington, 1946. 2 p. (processed).

Library of Congress

A check-list of current serials in the United States zone of Germany. Prepared by the Library of Congress Mission, Hq. U. S. Forces, European Theater. Washington, 1947, 23 p.

A guide to the law and legal literature of Paraguay. By Helen L. Clagett. Washington: Govt. Ptg. Off., 1947, 59 p. 25¢. (The publication of the remaining guides to the legal literature of Latin America has been speeded up by a simplification program which eliminates information on administrative organization and, in effect, makes these remaining guides check-lists of the holdings of the Library of Congress in these fields. Still to be printed are those for Bolivia, Mexican states, Venezuela, Chile, Peru, Uruguay, Argentina, and Brazil—in the expected order of their appearance before June 30, 1947.)

Southeast Asia, 1935–45: A selected list of reference books, compiled by Cecil Hobbs [of the Orientalia Division. Published in coöperation with the Institute of Pacific Relations.] Washington, 1946. 86 p. (processed).

Acquisition department. European imprints for the war years received in the Library of Congress and other federal libraries: part 3, French imprints, 1940–45. Washington, 1946. 284 p. (processed).

Legislative reference service. Bibliography of publications by members of the 79th Congress. G. Hemline, comp. Washington, 1946. 13 p. (mim.).

——— Industrial relations policy. Proposals to modify the law and practice of industrial relations and analysis of selected bills. Gustav Peck, comp. Washington, 1947, 92 p. tables. (mim.) (Public Affairs bulletin no. 48.)

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

——— *State law digest.* Current ideas in state legislatures 1944–45: a review of laws enacted during the biennium. Washington, 1947. 98 p. (State law digest report no. 8.)

Navy Department

Naval intelligence office, Naval records and library office. Naval documents related to United States wars with Barbary powers. v. 6, Naval operations, including diplomatic background, May, 1805–07. Washington: Govt. Ptg. Off., 1944. 768 p., map. $4.00.

President of the United States

Budget bureau. Government offices. Digest of functions of federal agencies. Revised Sept., 1946. Washington: Govt. Ptg. Off., 1946. 56 p. [Supp. to U. S. Govt. manual.]

——— *Emergency management office, Civilian production administration.* Labor policies of National Defense Advisory Commission and OPM, May, 1940–Apr., 1942: prepared by Richard J. Purcell. Washington: Govt. Ptg. Off., 1946. 247 p. (processed).

State Department

Papers relating to the foreign relations of the United States, the Paris peace conference, 1919, v. V and VI. Washington: Govt. Ptg. Off., 1947. $2.25 each. (Reviewed in the Dept. of State Bulletin, January 5, 1947.)

The following in the numbered series of State department publications have appeared—all from the Government Printing Office, 1946–47.

2615. Report of the West Indian conference, second session. St. Thomas, Virgin Islands, Feb. 21 to March 13, 1946. 86 p.

2630. United States economic policy toward Germany. 149 p. 40¢.

2641. Inter-American coffee agreement: Protocol between the United States of America and other American republics modifying and extending for one year the agreement of November 28, 1940 . . . . 14 p. 5¢.

2642. Coöperative education: Agreement between the United States of America and the Dominican Republic . . . effective October 13, 1945. 12 p. 5¢.

2644. Wheat agreement between the United States of America, Argentina, Australia, Canada, and the United Kingdom . . . . 6 p. 5¢.

2647. Purchase of Brazilian rice surpluses: agreement . . . July 20, 1945. 26 p. 10¢.

2648. Telecommunications: agreement between the government of the United States of America and certain governments of the British Commonwealth . . . Dec. 4, 1945. 11 p. 5¢.

2657. Papers relating to the foreign relations of the United States, 1931. Vol. II. 1082 p. $3.00.

2680. The United States and economic collaboration among the countries of Europe. 18 p. 10¢.

2681. International control of atomic energy. Speech by Bernard M. Baruch . . . Oct. 8, 1946. 8 p. 5¢.

2702. International control of atomic energy. Growth of a policy. An informal summary record of the official declarations and proposals relating to the international control of atomic energy made between August 6, 1945, and October 15, 1946. 281 p. 45¢. (Reviewed in the Department of State *Bulletin*, Feb. 2, 1947, and a less technical version of Pub. 2661.)

2703. International health conference, New York, N. Y., June 19 to July 22, 1946. Report of the United States delegation, including the final act and related documents. 145 p. 35¢.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

2708. American wool import policy. 19 p.
2713. Toward effective international atomic energy control. Statement by U.S. representative to Atomic energy commission. 13 p. 5¢.
2727. The Nürnberg judgment. A summary. 34 p. 10¢.
2735. The United States and the United Nations. Report by the President to the Congress for the year 1946. (Report series no. 7) 221 p. 45¢.
2745. Third session of the council of foreign ministers, New York City, Nov. 4 to December 12, 1946. 13 p.

War Department

Military government information guide: The statutory criminal law of Germany, A translation of the German criminal code of 1871, with amendments; together with the most important supplementary penal statutes and with laws nos. 1 and 11 and proceedings no. 3 of the central court for Germany. 1946. 276 p. 45¢.
Advisory committee on military justice. Text of the report, Dec. 22, 1946. Washington, 1946. 15 p. (mim.)
Army Pearl Harbor Board. Report. Washington, 1946. 2 pts. (mim.)
Civil affairs division. Austria (territory under U.S. occupation). Military government of the United States commission, July, 1946. Washington, 1946. 250 p. (processed).
——— *Germany (territory under U.S. occupation), Office of Military Govt., Economics div.* A year of Potsdam: the German economy since the surrender. Arthur Settel, ed. Washington, 1946. 217 p. (mim.)
——— Germany (*territory under U.S. occupation*), Legal and judicial affairs, Sept. 20, 1946. Washington, 1946. 29 p. (mim.)
——— France and property control. Washington, 1946. 18 p. (mim.)

STATE AND TERRITORIAL

ALABAMA

University, Bureau of public administration. The legislative process in Alabama: recess and interim committees. By Hallie Farmer . . . University, 1946. 43 p. (Univ. of Alabama, Bureau of public administration publications [no.] 25).
——— University bureaus of public administration. [Papers by James W. Fesler and others.] University, 1946. 87 p. (University of Alabama, Bureau of public administration publication [no.] 23.)

CALIFORNIA

Legislative council. Summary of California statutory provisions conferring quasi-legislative functions upon state administrative agencies . . . Sacramento, 1946. 128 p.
University of California, Berkeley, Bureau of public administration. State and local finance and taxation; a bibliography of materials published 1941–1946. Comp. by Dorothy Campbell Tompkins . . . Berkeley, 1946. 98 p. (mim.) (Postwar bibliographies no. 2.)
Los Angeles, Bureau of budget and efficiency. Organization, administration, and management of administrative services: pt. 1, Messenger service. Los Angeles 12, 120 City Hall, 1946. 19 p. (mim.)
——— Recommendations for improvement of the organization, administration, and management of the bureau of the right of way and land, Department of public works. Los Angeles 12, 120 City Hall, 1946. 45 p.

ILLINOIS

Department of aëronautics. Laws pertaining to aëronautics, including those relating

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to the regulation of aëronautics and the development of public airports. Springfield, 1945. 144 p. (Book I).

——— Laws pertaining to the authority of the department of aëronautics in relation to aircraft, airmen, and airports. Springfield, 1945. 54 p. (Book II).

——— Laws pertaining to the powers of the political subdivisions of the state government in relation to the development of public airports. Springfield, 1945. 94 p. (Book III).

KANSAS

Legislative council. Research dept. Survey of psychiatric facilities in Kansas. Part 1. Over-all objectives. Basic considerations involved in Kansas state planning . . . Topeka, 1946. 9 p. (Pub. no. 143.)

—— Regulation and licensing of professional engineers: survey of state laws (with emphasis on problems of legal definition. Topeka, 1946. 30 p. (mim.) (Pub. no. 142.)

——— Retirement of municipal employees: analysis of the retirement problem and survey of the principal features of local and state systems . . . Topeka, 1946, 42 p. (mim.) (Pub. no. 144.)

KENTUCKY

University of Kentucky, Lexington, Bureau of business research. Kentucky city finances, . . . Lexington, 1946. 275 p. charts. tables. (Bulletin . . . no. 12.)

MICHIGAN

Department of corrections. Corrections in Michigan; fourth biennial report, 1943–1944. Lansing, 1946. 109 p. (Not included because of subject-matter, but because it is an example of how interesting an administrative report can be made. It gives an excellent picture of the administrative and legal set-up, as an introduction to the statistical report.)

University of Michigan, Ann Arbor. Bureau of government. Reorganization of Michigan's county government [by Robert S. Ford and Claude R. Thark]. Ann Arbor, 1946. 24 p. 10¢.

Detroit, City plan commission. The civic center plan: a master plan report. Detroit 26, 1214 Griswold Street, 1946. 24 p. (Ser. no. 3.)

NEBRASKA

Legislative council. [Sub-committee reports on various aspects of state organization and legislation have been published in small mimeographed bulletins during 1946. Topics included are realignment of legislative committees, reports of state departments, district courts, etc.]

NEW JERSEY

Law revision and bill-drafting commission. Official manual, for use in drafting legislation for introduction in the New Jersey legislature. Trenton, Room 62, State house, 1946. 21 p., tables.

NEW YORK

Division of housing. Housing amendment to the state constitution (article XVIII), public housing law, and related acts. [Albany?], 1946. 190 p.

Salary standardization board. Ninth report: submitting a revised schedule of compensation for the positions covered by chapter 859, Laws of 1937 . . . and chapter 302, Laws of 1945 . . . Albany, 1946. 186 p.

New York City. Airport authority. Airport program for New York City, Jan. 13, 1947. Brooklyn, Floyd Bennett Field, 1947. 42 p.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

——— *Mayor's advisory transit committee.* Report. New York, 250 Hudson St., 1946. 56+xxxv p.

OREGON

Tax study commission. Property, personal, and business taxes in the Oregon revenue system: fifth preliminary research report, August, 1946. S. J. Barrick. Salem, 317 Capitol Bldg., 1946. 93 p. (mim.)

PUERTO RICO

Office of Puerto Rico, Washington, D. C. Basic statistics on Puerto Rico. S. L. Descartes, comp. Washington 6, 1026 17th St., N.W., 1946. 103 p. (processed).

RHODE ISLAND

Providence. City plan commission. Master plan for land use and population distribution. Providence 3, City Hall, 1946. 27 p. (processed). (Publication no. 4.)
——— Master plan for redevelopment of residential areas. 1946. 41 p. (Publication no. 5.)

SOUTH CAROLINA

University. Bureau of public administration. Aids for state legislators. Columbia, 1946. 25 p. (mim.) (1947 series on legislative problems, no. 2.)
Historical commission. Journal of the constitutional convention, May 10—June 3, 1790. F. M. Hutson, ed. Columbia, 1946. 38 p. $1.50.

TENNESSEE

State planning commission. Sources of municipal revenue, December, 1946. Eleanor Keeble, comp. Nashville 3, 432 6th Ave. N., 1946. 12 p. (processed). (Publication no. 169.)

VIRGINIA

University of Virginia, University. Bureau of public administration. The administration of liquor control in Virginia. H. Wesley Ward. Charlottesville, 1946. 206 p. (mim.)

FOREIGN AND INTERNATIONAL

ARGENTINA

Ministerio del interior. Las fuerzas armadas restituyen el imperio de la soberania popular; las elecciones generales de 1946. Buenos Aires, Imprenta de la Cámera de diputados, 1946. 2 v.
Ministry for foreign affairs and worship. Dept. of information for abroad. Argentine news, number 81. [The English language edition of this periodical, no. 81, 1946, is devoted to the victory and inauguration of General Juan D. Perón as president. There are biographical sketches and photographs of his cabinet.]
Universidad nacional de Tucumán. Facultad de derecho y ciencias sociales. Derecho social (teroía y técnica) . . . [por] Norberto Antoni. Tucumán, Editorial la Raza, 1946. 61 p.

BRAZIL

Delegação a Conferencia das Nações unidas para a organização internacional, San Francisco, 1945. Relatório da delegação . . . Tio de Janeiro, Imprensa nacional, 1946. 112 p.

BULGARIA

Ministry of information and arts. Bulgaria and the allied nations: armistice agreement. Sofia, 1945. v. p. (Text in Bulgarian, Russian, English.)

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Ministry of information and arts. The struggle of the Bulgarian people against fascism. Sofia, 1946. 116 p.

CHILE

Universidad de Chile. Los ministros de estados y los agentes del ejecutive en el derecho constitucional Americano, [por] Graciela Alvarez Rojos. Santiago, 1945. 52 p. (Thesis.)

Las comisiones parlamentarias en la Cámara de deputados (desarollo histórico y régimen legal). [por] Carlos Andrade Geywitz. Santiago, 1945. 74 p. (Thesis.)

DOMINICAN REPUBLIC

Comisión par el estudio del informe de la Brookings institution sobre "La colonización de refugiados en la República dominicana." Capacity of the Dominican republic to absorb refugees; findings of the Commission . . . Ciudad Trujillo, 1945. 120 p.

GREAT BRITAIN

Scientific and technical aspects of the control of atomic energy. London: H. M. S. O., 1946. 42 p. /1.

British information services. Reference division. Britain and trusteeships. London: H. M. S. O., 1946. 26 p.

Cabinet mission on India. Correspondence with the Congress party and the Muslim league, 20th May-29th June, 1946. London: H. M. S. O., 1946. 35 p. /6.

Foreign office. An agreement for the establishment of the Caribbean commission, Washington, 30th October, 1946. London: H. M. S. O., 1946. 8 p. /2. (Cmd. 6972, 1946.)

——— Judgment of the international military tribunal for the trial of German major war criminals (with the dissenting opinion of the Soviet member . . . London: H. M. S. O., 1946. 149 p. 2/6. (Cmd. 6964, 1946.)

——— Memorandum of agreement . . . concerning the British and American zones of occupation in Germany, New York, 2d December, 1946. London: H. M. S. O., 1946. 5 p. /1. (Cmd. 6984, 1946.)

——— Agreements between the governments of the United Kingdom, United States of America, and Union of Soviet Socialist Republics and the government of the French Republic concerning control machinery and zones of occupation in Austria and the administration of the city of Vienna. London: H. M. S. O., 1946. 39 p. (Cmd. 6958, 1946.)

——— Economic agreement between H. M. government in the United Kingdom, and the Argentine government, Buenos Aires, Sept. 17, 1946. London: H. M. S. O., 1946. 10 p. (Cmd. 6953, 1946.) (This agreement has been the occasion of interchanges of notes between Great Britain and the United States.)

Sub-committee on the Spanish question. Report. (The Sub-committee of the United Nations was appointed on April 29, 1946, and consisted of representatives of Australia, Brazil, China, France, and Poland.) London: H. M. S. O., 1946. 103 p. 4/6.

Royal commission on equal pay. Report, 1944–46. London: H. M. S. O., 1946. 220 p. 4/. (Cmd. 6937, 1946.)

ITALY

Italian government. Considerations by the Italian government with respect to the naval clauses of the draft of the peace treaty. Rome, 1946. 38 p.

——— Additional considerations by the Italian government regarding the naval clauses of the draft peace treaty. Rome, 1946. 16 p.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Ministero dell'aeronautica. Considerazioni relative all'aviazione militare Italiana nei riguardi del trattato di pace . . . Roma, 1946. 37 p.
Ministerio della marina. Considerations regarding the merchant marine with reference to the peace treaty. Rome, 1946. 22 p.
——— Considerations regarding the Italian navy with reference to the peace draft. Rome, 1946. 78 p.

MEXICO

Congreso. Comisión permanente. La doctrina: política del buen vecino. El hombre: Franklin D. Roozevelt; homenaje del pueblo mexicano. México, 1946. 60 p.
Secretaría de relaciones exteriores. La anexión de Centroamerica a Mexico. Documentos y escritos de Enero a Junio de 1823. Tomo IV. Compilación de Rafael Heliodoro Valle. Mexico, 1945. 354 p. (Archivo histórico diplomático Mexicano, segunda series, número 3.)
——— Bolívar en Mexico, 1799–1832. Compilación . . . de Rafael Heliodoro Valle. Mexico, 1946. 141 p. (Archivo histórico diplomático Mexicano, segunda serie, número 2.)
——— Organización y funcionamiento, servicio exterior mexicano . . . Mexico, 1946. 32 p.

NIGERIA

Legislative council. Report of the Lagos town planning commission, with recommendations . . . Lagos, Govt. Printer., 1946. 52 p. 2/6.

PALESTINE

Government. A survey of Palestine, Jerusalem, Govt Printer, 1946. 2 v. tables. (Prepared for the use of the Anglo-American committee of inquiry.)

PANAMA

Custodio de bienes de extranjeros. Disposiciones relativas a propriedades y negocios de extranjeros. Panamá [n.d.], 14 p.
Spanish embassy, London. Office of cultural relations. Recent social reforms in Spain, 1939–1945. Martin Brugarola. 1946. 37 p.
——— *Office of information.* The Spanish question before the United Nations; an outrage on international law. 1946. 21 p.
Ministry of justice. The Red domination in Spain. Madrid, 1946. 392 p. tables.

TURKEY

Turkish information office. Convention regarding the régime of the Straits, signed at Montreux, July 20, 1936. 1946. 13 p. (mim.)

URUGUAY

Constitución de la R. O. del Uruguay aprobada en el plebiscito del 29 de noviembre de 1942. (Con un repertorio alfabético sistemático del articulado.) Montevideo, Imprenta Nacional, 1946. 303 p.

YUGOSLAVIA

Yugoslav embassy, London. The French proposal for the delimitation between Yugoslavia and Italy, and the reality. London, 1946. unp.
——— Trieste. London, 1946. 61 p.
——— The treason of Mihailovitch: 81 military documents, Chetnik, German, Italian. London, 1945. 71 p. 2/6.
——— Trieste and the Julian March: the original Yugoslav government memo-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

randum on these subjects and subsequent official statements, with maps. 1946. 82 p.

——— Yugoslav constitution. London, 1946. 48 p.

INTERNATIONAL LABOR ORGANIZATION

Constitution and rules. Montreal, Organisation Internationale du Travail, 1946. 114 p. (English) 114 p. (French).

PAN AMERICAN UNION

Actas de las sesiones del Consejo interamericano económico y social, vol. I . . . Washington, Pan American Union, 1946. 145 p. (mim.)

Employment of United States citizens in Latin America. Washington, Pan American Union, 1945. 18 p. (mim.)

Inter-American conference for the maintenance of continental peace and security. Rio de Janeiro, Brazil. I. Report of the Committee of the Governing Board . . . II. Projects and proposals submitted by the respective governments. Washington, Pan American Union, 1946. 143 p. (also a French language edition, 147 p.).

Inter-American conference of experts on copyright, Washington, D. C., 1946. Proceedings. Washington, Pan American Union, 1946. 180 leaves.

Inter-American juridical committee. Anteproyecto de declaración de los derechos y deberes internacionales del hombre e informe anexo . . . Washington, Pan American Union, 1946. 57 p. (mim.)

Treaties and conventions signed at the Third international conference of American states, Rio de Janeiro, July 23–Aug. 27, 1906. Washington, Pan American Union, 1946. 51 p. 50¢.

UNITED NATIONS

Handbook, no. 6. New York, 1946. 108 p.

Handbook. General assembly supplement. Lake Success, N. Y., 1946. 59 p.

Preliminary budget estimates of expenditure. First annual budget 1946 and second annual budget 1947. Lake Success, N. Y., 1946. 89 p.

General assembly. Official records of the first part of the first session: First committee: Political and security questions, including regulation of armaments. Summary record of meetings 11 Jan.–12 Feb., 1946. London, 1946. 35 p.

Second committee: Economic and financial questions. London, 1946. 28 p.

Third committee: Social, humanitarian, and cultural questions. London, 1946. 65 p.

Fourth committee: Trusteeship. London, 1946. 58 p.

Fifth committee: Administrative and budgetary questions. London, 1946. 70 p.

Sixth committee: Legal questions. London, 1946. 61 p.

League of nations committee: London, 1946. 25 p.

Permanent headquarters committee; Interim committee for the selection of a site for the permanent headquarters of the United Nations: Summary record of proceedings, 2–14 February, 1946; 22 December, 1945—5 February, 1946. London, 1946. 104 p. (All the above in French and English texts.)

Food and agriculture organization of the United Nations. FAO mission for Greece: Preliminary summary of findings and recommendations . . . Washington, 1946. 18 p.

——— Report of the second session of the Conference, held at Copenhagen, Denmark, 2–13 September, 1946. Washington, 1946. 70 p.

Preparatory committee of the U.N. conference on trade and employment. Report of the first session. London, 1946. 67 p.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

NOTES ON SOME RECENT DOCUMENTARY MATERIALS

JAMES B. CHILDS
Library of Congress

In France, the laws enacted by the first Assemblée Nationale Constituante, which sat from November 6, 1945, to April 26, 1946, have been printed in two small octavo volumes (798 p.) at the Imprimerie de l'Assemblée Nationale Constituante, 1946, under the title *Recueil des lois adoptées par l'Assemblée nationale constituante et promolguées du 24 novembre, 1945, au 24 mai, 1946, préparée par les soins du secrétaire général de la présidence.* These two volumes mark the resumption of the very handy series of French session laws published under the title *Recueil des lois delibérées par la Chambre des députés*, beginning with the year 1881 and continuing to the 60th fascicule for January–July 10, 1940. Full text of the laws is reproduced with the exception of certain supplementary tables, conventions, treaties, agreements, etc. With each law, reference is given to the place of original publication in the *Journal officiel*, and also the legislative bill print (*projet de loi*), to the committee report, and to the slip law print as adopted by the Assembly. Arrangement is by date of promulgation. At the end of the second volume, there is an alphabetical subject index. These session laws seem to be printed mainly for the use of members of the Assembly, and it would be very desirable if they could be placed on sale, thus making them more widely accessible.

In these two volumes, certain legislation may be noted as having a special interest. The following relate to the nationalization of national enterprises: December 2, 1945, on the Banque de France and certain other large banks; April 6, 1946, on electricity and gas; April 25, 1946, on certain insurance companies; and May 17, 1946, on mineral fuel exploitation as "les Charbonnages de France." Organization of research is dealt with in the following acts: May 3, 1946, creating the Office Nationale d'Études et de Recherches Aéronautiques; and May 18, 1946, creating the Institut National de la Recherche Agronomique. Organization of local assemblies in the overseas territories is the subject of a law of May 9, 1946.

For the first Assemblée Nationale Constituante of France, the proceedings in full of the Commission de la Constitution were printed by the Imprimerie de l'Assemblée Nationale Constituante in August, 1946, in a volume of 797 pages under the title *Séances de la Commission de la Constitution, Comptes rendus analytiques imprimés en execution de la résolution votée par l'Assemblée le 25 Avril 1946.* This important committee of 42 members sat 75 times from November 30, 1945, to April 25, 1945, in the drafting of the Constitution that was rejected in the referendum of May 5th. The report is in the main a full summary of the committee proceedings with only occasional stenographic transcription, and will be examined with interest as a step in the development of the present French constitution.

For both the first Assemblée Nationale Constituante, which sat from November 6, 1945, to April 26, 1946, and the second, which sat from June 14, 1946, to Oct. 5, 1946, a small pocket-size directory has been published under the title *Notices et portraits* printed by the Imprimerie de l'Assemblée Nationale Constituante. A page is given to each member for a portrait and very brief biographical notice including political affiliation, date and place of birth, and profession or trade. Arrangement is alphabetical by departments of France followed by Algeria and the overseas territories, there being an alphabetical index at the beginning. Indochina was not represented. Before the War, the Chambre des Députés printed regularly at the beginning

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of each legislature a similar directory (*Notices et portraits*), beginning with the year 1907, and the Sénat printed officially its directory (*Notices et portraits*) in 1930, 1933, 1936, and 1939.

Returns of the elections for the two French Constituent Assemblies have been brought together with a brief analysis by Raoul Husson, former secretary-general of the Statistique Générale de la France, and published by Le Monde, Paris, 1946 (XLIV, 287 p.), under the title *Elections et referendums des 21 octobre, 1945, 5 mai et 5 juin, 1946.*

For the Peace Conference in Paris in 1946, the French government issued a compilation of 278 pages, in a form somewhat similar to the "livres jaunes" of the Ministère des Affaires Étrangères, under the title *Recueil de textes à l'usage des conférences de la paix.* The volume contains the text in French of the Atlantic Charter, the United Nations Declaration, the communiqués of the Moscow, Cairo, Teheran, Yalta, and Potsdam conferences, documents relative to the calling of the Paris Conference, the acts of capitulation and armistice for Germany, Austria, Bulgaria, Finland, Hungary, Italy, Japan, and Rumania, as well as the acts establishing control in Germany and Austria. The compilation concludes with tables showing the dates of declarations of war and of the resumption of diplomatic relations, and a topical index.

"Documents Relating to the Establishment of the Allied Control Authority" is the title of supplement no. 1 of the *Official Gazette of the Control Council for Germany* (Berlin) published April 30, 1946. The seven essential documents are reproduced in English, French, Russian, and German—the four languages used by the Control Council. A fascismile of the last pages of the originals of the act of military surrender of the High Command of the Wehrmacht on May 8, 1945, at Berlin is included.

The Legal Division of the Office of Military Government for Germany (U.S.), A.P.O. 742, has compiled in one pamphlet of 79 pages (letter paper size) all the legislation applicable in the United States Zone through May, 1946, including enactments previously published in *Military Government Gazette, Germany*, nos. 1, 2, and 3. This consolidated *Issue A* is dated June, 1946, and has the title *Military Government Gazette, Germany, United States Zone, published by the Office of Military Government for Germany (U.S.) Amstblatt der Militärregierung, Deutschland, Amerikanische Zone, herausgegeben von Office of Military Government for Germany (U.S.).* United States Zone refers to Greater Hesse, Württemberg-Baden, and Bavaria, including only legislation common to all, and does not refer particularly to the Bremen-Bremerhaven enclave and to the U. S. sector of Berlin. Text is given in English and German in parallel columns of Proclamation 1 (SHAEF), of Military Government Proclamations 1, 2, and of Military Government laws 1, 2, 3, 4, 5, 6, 7, 8, 51, 52, 53, 54, 55, 76, 77, 151, 153, 154, 161, 191, as well as Ordinances 1, 2, 3, 4, 5, 6, and three notices. Allied Control Authority enactments are not given.

For the Soviet Zone of Occupation in Germany, a compilation in German (57 pp.) of the enactments and orders for the year 1945 having general applicability was published in 1946 by the Verlag der Sowjetischen Militärverwaltung in Deutschland at Berlin under the title *Befehle des Obersten Chefs der Sowjetischen Militärverwaltung in Deutschland, aus dem Stab der Sowjetischen Militärverwaltung in Deutschland.* It may be noted that the compilation includes only Befehle (enactments) nos. 1, 2, 3, 4, 5, 11, 12, 13, 15, 19, 42, 92, 124 and 163. The Military Administration for the Soviet Zone was set up by Befehl no. 1, June 9, 1945. Of the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Ämtliche Bekanntmachungen of the Staff of the Military Administration, one of September 12, 1945, provided for the organization of eleven Verwaltungen, or German departments, having jurisdiction over the whole Soviet Zone in certain specified fields, there being for instance a Transportverwaltung and a Justizverwaltung.

For the state of Thüringia in the Soviet Zone, a *Regierungsblatt für das Land Thüringen* containing the state enactments and regulations, as well as subsequently the Control Council legislation, was first published at Weimar with no. 1 for July, 1945. In 1946, an official series of pamphlet compilations of legislation in force in Thuringia was begun under the title *Thüringische Gesetze und Verordnungen.*

For the French Zone of Germany, a loose-leaf compilation of the legislation in force, prepared by Marcel Martin, director of Services Juridiques et de Legislation and printed by the *Journal officiel* of the Zone, was issued at Baden Baden late in 1946, under the title *Répertoire permanent de législation, G. M. Z. F. O.* In addition to ordonnances, arrêtés, and other legislative and regulatory acts of the French Military Goverment are included the French texts of the Allied Military Government Enactments and of the Control Council Legislation. Wherever possible, reference is given to the original place of publication in the *Journal officiel* of the Zone. Arrangement is alphabetical by rather large topics somewhat as follows: Administration française en Allemagne, Education publique, Fonctionnaires, etc.

The Control Agreement for Austria as concluded at Vienna June 28, 1946, was printed as a supplement for no. 7, June, 1946, to the *Gazette of the Allied Commission for Austria*, the text being given in English, French, and Russian, accompanied by a German translation. In an Annex is given a list of the divisions of the Allied Commission matching one or more ministries of the Austrian government.

The provisional enactments and orders of the Norwegian government as published in the *Lovtidend* during its period of exile in London have been assembled by the Justis-og Politiedepartement as printed in the separate numbers from time to time, furnished with a systematic index and a chronological table, and published in a volume of about 650 pages at Oslo early in 1946 with the title *Norsk lovtidend, 1. og 2. avdeling ("Londonutgaven") . . . 1940–1945.* Number 1, 1940, printed at London under the date of August 15, was a revised reprint of the number printed in Norway, May 8, 1940, just before the evacuation. In 1940, three numbers were issued; in 1941, two numbers; in 1942, four numbers; in 1943, five numbers; in 1944, three numbers; in 1945, eight numbers; and a supplementary number 1940–45. A collection of these seems also to have been issued in London. This handy volume recently published at Oslo makes possible the convenient examination of all the provisional enactments of the government in exile, the separate numbers doubtless having had only a most limited distribution, and might point the way to a need for a review of the problems on which the various governments in exile made enactments.

The new constitution of Japan as promulgated on November 3, 1946, was printed in a certified official English translation, first as an extra number (9 p.), Sunday, November 3, of the *Official Gazette, English edition*, and next by the Cabinet Secretariat in a 16-page pamphlet under the title *The Constitution of Japan.* Six months from the date of promulgation, the document goes into force.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The American Political Science Review

BOARD OF EDITORS

EVERETT S. BROWN,
University of Michigan

HARWOOD L. CHILDS,
Princeton University

ROBERT E. CUSHMAN,
Cornell University

DAVID FELLMAN
University of Wisconsin

RUSSELL H. FITZGIBBON,
Univ. of California (L.A.)

ROBERT K. GOOCH
University of Virginia

FRITZ MORSTEIN MARX,
Bureau of the Budget

C. HERMAN PRITCHETT
University of Chicago

CHARLES C. ROHLFING,
University of Pennsylvania

FREDERICK L. SCHUMAN,
Williams College

FREDERIC A. OGG, Managing Editor, University of Wisconsin

VOLUME XLI

1947

GEORGE BANTA PUBLISHING COMPANY
MENASHA, WISCONSIN
1947

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

P
050
A51

Copyright, 1947, by
THE AMERICAN POLITICAL SCIENCE ASSOCIATION

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

48-230
21255

CONTENTS

Number 1—February, 1947

The United States Supreme Court, 1936–1946. *Walter F. Dodd* 1
American Government and Politics
The Second Session of the Seventy-ninth Congress. *Floyd M. Riddick*.. 12
Rural Local Government
County and Township Government in 1945. *Clyde F. Snider and Neil F. Garvey* 28
Federal Executive Reorganization Reëxamined: A Symposium. II. *Fritz Morstein Marx (ed.)*
IV. Adjusting the Departmental System. *Lloyd M. Short* 48
V. Systematizing Congressional Control. *Robert M. LaFollette, Jr.*.... 58
VI. Political Limitations on Executive Reorganization. *Avery Leiserson* 68
News and Notes, Personal and Miscellaneous. *Managing Editor* 85
Forty-second Annual Meeting of the American Political Science Association. *Harvey Walker* 101
Book Reviews and Notices 129
Recent Publications of Political Interest
Books and Periodicals. *M. Q. and M. H. Sibley* 169
Government Publications. *Miles O. Price* 185

Number 2—April, 1947

The Criminality of Aggressive War. *Leo Gross* 205
Religious Liberty v. The Police Power: Jehovah's Witnesses. *Hollis W. Barber* 226
Constitutional Law in 1945–46. *Robert E. Cushman* 248
American Government and Politics
The Federal Administrative Procedure Act. *Foster H. Sherwood*..... 271
Strengthening State Legislatures. *Lynton K. Caldwell*..... 281
Legislative Reference Service for the Congress of the United States. *W. Brooke Graves* 289
Foreign Government and Politics
Post-War Municipal Elections in Great Britain. *William A. Robson*... 294
Democracy and Socialism in New Zealand. *Leslie Lipson* 306
Instruction and Research
Toward a More Integrated Political Science Curriculum. *Landon G. Rockwell* 314
News and Notes, Personal and Miscellaneous. *Managing Editor* 321
Book Reviews and Notices 331
Recent Publications of Political Interest
Books and Periodicals. *M. Q. and M. H. Sibley* 384
Government Publications. *Miles O. Price* 401
Notes on Some Recent Documentary Materials. *James B. Childs*..... 410

Number 3—June, 1947

Recent Constitution-Making in France. *Robert K. Gooch* 429
American Government and Politics
The Term of Office of the President. *Everett S. Brown* 447

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Neglected Aspects of Intergovernmental Fiscal Relations. *Wylie Kilpatrick* 452
Foreign Government and Politics
Due Process for Ex-Dictators; A Study of Judicial Control of Legislation in Guatemala. *J. A. C. Grant* 463
Political Theory
Beyond Relativism in Political Theory. *Arnold Brecht* 470
Undergraduate Instruction in Political Science. *Francis O. Wilcox (ed.)*
I. The Introductory Course in Government. *Francis O. Wilcox* 489
II. The Major in Political Science. *Harvey C. Mansfield* 500
III. Undergraduate Training for the Public Service. *James W. Fesler* .. 507
IV. The Use of Visual Aids in Political Science Teaching. *John D. Millett* 517
V. The Teacher of Government. *Ethan P. Allen* 527
News and Notes, Personal and Miscellaneous. *Managing Editor* 535
Book Reviews and Notices 556
Recent Publications of Political Interest
Books and Periodicals. *M. Q. and M. H. Sibley* 610
Government Publications. *Miles O. Price* 626
Notes on Some Recent Documentary Materials. *James B. Childs* 634

NUMBER 4—AUGUST, 1947

The Utilization of Social Scientists in the Overseas Branch of the Office of War Information. *Leonard W. Doob* 649
Political Influence and Agricultural Research. *Charles M. Hardin* 668
American Government and Politics
The Hatch Act Decisions. *Ferrel Heady* 687
State Constitutional Law in 1946–47. *Foster H. Sherwood* 700
Foreign Government and Politics
The Influence of Ideas on Policies as Shown in the Collectivization of Agriculture in Russia. *Barrington Moore, Jr.* 733
News and Notes, Personal and Miscellaneous. *Managing Editor* 744
Doctoral Dissertations in Political Science. *David Fellman* 754
Book Reviews and Notices 771
Recent Publications of Political Interest
Books and Periodicals. *M. Q. and M. H. Sibley* 828
Government Publications. *Miles O. Price* 843

NUMBER 5—OCTOBER, 1947

Japan's Constitutions: 1890 and 1947. *Harold S. Quigley* 865
Workers' Control of Industry and the British Labor Party. *Robert A. Dahl.* 875
Britain Begins to Rebuild Her Cities. *Coleman Woodbury* 901
Natural Law: A Functional Interpretation. *Burke Inlow* 921
American Government and Politics
The New Presidential Succession Act. *Joseph E. Kallenbach* 931
The Governor's Veto in Pennsylvania. *M. Nelson McGeary* 941
Public Administration
Public Administration in the Atomic Age. *Arthur W. Bromage* 947
Establishment Boards in the Federal Civil Service. *Randolph J. Jouno* . 955
International Affairs
Relations between the United Nations and the International Labor Organization. *John H. E. Fried* 963
Instruction and Research
Political Science in the United States in Wartime. *Carl J. Friedrich* ... 978

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

News and Notes, Personal and Miscellaneous. *Managing Editor* 990
Book Reviews and Notices 998
Recent Publications of Political Interest
Books and Periodicals. *M. Q. and M. H. Sibley* 1052
Government Publications. *Miles O. Price* 1070
Notes on Some Recent Documentary Materials. *James B. Childs* 1078

NUMBER 6—DECEMBER, 1947

Foundations of American Conservatism. *W. Hardy Wickwar* 1105
American Government and Politics
A New Approach to Federal Executive Reorganization. *Ferrel Heady* .. 1118
A New Constitution for New Jersey. *Bennett M. Rich* 1126
Rural Local Government
County and Township Government in 1946. *Clyde F. Snider and Neil F. Garvey* 1130
Ten Years of the Supreme Court: 1937–1947, Part I, *Robert E. Cushman (ed.)*
I. Federalism. *David Fellman* 1142
II. Separation and Delegation of Powers. *Oliver P. Field* 1161
III. The Power to Regulate Commerce. *Vincent M. Barnett, Jr.* 1170
Foreign Government and Politics
The Revival of German Unions of Local Authorities After World War II. *Roger H. Wells* 1182
International Affairs
Is a Peace Treaty with Germany Legally Possible and Politically Desirable? *Hans Kelsen* 1188
News and Notes, Personal and Miscellaneous. *Managing Editor* 1194
Book Reviews and Notices 1207
Recent Publications of Political Interest
Books and Periodicals. *M. Q. and M. H. Sibley* 1261
Government Publications. *Miles O. Price* 1278
Index to Volume XLI. *Mary T. Reynolds* 1285

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED